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PUBLISHERS' NOTE.

Special attention is drawn to the Addenda, page lxiii, and to the General Note on the Law of Property (Amendment) Bill, page lxv.

PRIDEAUX'S

FORMS AND PRECEDENTS

IN

CONVEYANCING

ADAPTED FOR USE UNDER LORD BIRKENHEAD'S ACTS

(INCORPORATING WOLSTENHOLME'S FORMS AND PRECEDENTS)

WITH

DISSERTATIONS AND NOTES

TWENTY-SECOND EDITION

BY

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BOTH OF LINCOLN'S INN, BARRISTERS-AT-LAW

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ABBREVIATIONS.

Ad. of E. Act	Administration of Estates Act.
Agr. H. Act.	Agricultural Holdings Act.
Alpe	Alpe on the Stamp Acts.
Bkcy. Act	Bankruptcy Act.
B. S. Act	Building Societies Act.
Conv. Act	Conveyancing Act.
Coote	Coote on Mortgages.
Dan. Ch. F.	Daniell's Chancery Forms.
Dart	Dart on Vendors and Purchasers.
Fin. Act	Finance Act.
Fisher	Fisher on Mortgages.
Frost	Frost, Patent Law and Practice.
F. S. Act	Friendly Societies Act.
General Conditions of 1925	General Conditions of Sale issued by The Law Society.
Guard. of Inf. Act	Guardianship of Infants Act.
H. B. R.	Hansell's Bankruptcy Reports.
Highmore	Highmore's Stamp Laws.
Jud. Act	Judicature Act.
L. C. Act	Land Charges Act.
L. Clauses Act	Lands Clauses Act.
L. P. Act	Law of Property Act.
L. P. (Amend.) Act	Law of Property (Amendment) Act.
L. Q. R.	Law Quarterly Review.
L. R. Act	Land Registration Act.
L. R. R.	,, ,, Rules.
M. & Ch. Uses Act	Mortmain and Charitable Uses Act.
M. W. P. Act	Married Women's Property Act.
P. Act	Partnership Act.
P. & D. Act	Patents and Designs Act.
P. H. Act	Public Health Act.
P. S. W. Act	Private Street Works Act.
R. E. Charges Act	Real Estate Charges Act.

Reed	Reed's Bills of Sale Acts.
Rep. Pat. Cas.	Reports of Patent Cases.
R. P. Lim. Act	Real Property Limitation Act
R. S. C.	Rules of the Supreme Court.
Seton	Seton's Judgments and Orders.
S. L. Act	Settled Land Act.
S. R. & O.	Statutory Rules and Orders.
T. Act	Trustee Act.
Wh. & Tud. L. C.	White and Tudor's Leading Cases in Equity.
Withers	Withers on Reversions.
Wms. Bkcy.	Williams on Bankruptcy.
Wolst. & Cherry	Wolstenholme and Cherry's Conveyancing Statutes.
Woodfall L. & T.	Woodfall's Landlord and Tenant.

ADDENDA TO VOL. I.

Page xx, line 38. For "Representatives of" substitute "Representatives or."

Page 6, line 5. After "Part I" add "as amended by Act of 1925."

Page 107, line 10. For "applies only to" substitute "applies to mistakes in the conditions (*ff*) and to."

line 39. Insert "(*ff*) *Re Courcier*, [1923] 1 Ch. 565; 92 L. J. Ch. 498."

Page 185, line 6. For "s. 9 (1) (*c*)" substitute "s. 9 (1) (*e*)"; for "s. 8" substitute "ss. 7 and 8."

Page 200, line 30. For "any part" substitute "any act."

Page 211, line 27. For "Act, 1923" substitute "Acts, 1923 and 1925."

Page 216, line 15. For "Act, 1923" substitute "Acts, 1923 and 1925."

Page 226, column 2 of Objects 8 and 9. After "Part I" add "as amended by Act of 1925."

Page 227. In "remarks" as to "Subsidence, &c." and "Support, &c." insert in both places "See the Mines (Working Facilities and Support) Act, 1925 (amending the Act of 1923 as to the payment of money into Court)."

Page 227. In "remarks" as to "Water supply" insert "See also S. L. Act, 1925, s. 58 (3), and the Universities and College Estates Act, 1925, s. 17 (3)."

Page 249, line 44. For "hence" substitute "query whether."

Page 259, line 41. For "1922" substitute "1925."

Page 262, line 27. For "para. 4" substitute "para. 5."

Page 267, line 34. After "Jud. Act, 1884, s. 14" add "(see now Jud. Act, 1925, s. 47)."

Page 374, lines 47 & 48. Transpose "J" and "d."

Page 481, line 28. For "s. 97 (1)" substitute "s. 96 (1)."

Page 486, line 36. Insert after note (*h*) "A land charge must be registered to protect the covenants. The purchaser or covenantor should execute and the deed should be dated before the date fixed for completion, to enable the application to be made before that date."

Page 496, line 5. For "paragraph D" substitute "paragraph (C)." This has been corrected in the second impression.

Page 496, after line 7. "3. [Add Form No. 8, Sec. III, p. 483, *supra*, if the purchase-money is £500 or less]." This has been inserted in the second impression.

Page 521, line 38. For "s. 10 (6)" substitute "s. 10 (7)."

Page 540, line 32. For "s. 13" substitute "s. 15."

Page 550, line 20. Leave out "in fee simple."

Page 617, line 14. Insert "*Probates and letters of administration should be included in acknowledgments*)."

Page 618. In note (*e*) for "title can be made" substitute "the freeholds would vest." At the end of that note insert, "If the death occurred before 1926 and the land remains vested in personal representatives, they can make title under *ib.*, ss. 36 and 39."

Page 620, note (*g*). Leave out "It was never" to end of page.

Page 653, line 1. Insert "paid" before the words "out of money."

Page 707, line 39. Insert. "The Commissioners generally prefer that the conveyance should be executed by the trustees or the majority under s. 12 of the Act of 1869 in the name of the Official Trustee, to save the cost of personal execution by him; in this case they do not order the Official Trustee to concur."

Page 714, note (*k*). Insert at end, "Recitals of devolution of title to new trustees are frequently omitted in reliance on F. S. Act, 1896, s. 25."

Page 753, line 6. For "limited" substitute "reserved."

Page 788, line 19. For "Purchaser" substitute "Vendor."

Page 792, line 40. For "Act, 1923" substitute "Acts, 1923 and 1925."

Page 822, line 14. For "1906" substitute "1919."

line 34. After "s. 22" insert "as amended by the T. M. Act, 1919, s. 12. The T. M. Act, 1905, s. 33, has been re-enacted, with amendments, by the T. M. Act, 1919, s. 11."

line 35. After "158" insert "also Sebastian's T. M. Registration, 1905–19, 2nd Ed."

Page 826, line 38. After "complied with" insert "for instance the power cannot be made irrevocable."

Page 883, line 23. After "*paid*" insert "*The receipts for the parts of the rentcharge attributable to capital must be given by the S. L. Act trustees*]."

ADDENDA TO VOL. II.

Page 273, line 22. After "severally" add "to be his attorneys."

GENERAL NOTE TO VOLS. I AND II.

If the Law of Property (Amendment) Bill now in Parliament is passed in the form in which it was introduced, the consequences will be as follows :—

Family charges.

Clause 1. Absolute owners and trustees for sale holding subject to a family charge ; mortgagees who acquire a legal estate subject to a family charge under S. L. Act, 1925, s. 16 ; also persons who before 1926 acquired land subject to a family charge, and, in each case, the estate owners deriving title under them (including tenants for life under a settlement subsequently made) will, if necessary, be able to make title subject to the family charge, without requiring the capital money to be paid to S. L. Act trustees of a compound settlement. If independently of the old family charge the land is " settled land," the capital can be paid to the trustees of the subsequent settlement, without obtaining trustees of the compound settlement.

Though power is thus given, in the above cases, to convey subject to an old family charge, the powers to over-reach it (*i.e.*, by obtaining trustees of the settlement or compound settlement and paying the capital to them) are maintained.

It is not expedient, as a rule, that title should be made subject to a family charge, but where the absolute owner desires to take the money for his own purposes without the intervention of trustees, or the title to the charge is obscure, or money has to be raised and the owner of the charge refuses or is unable to postpone it to the intended mortgage, then it may be necessary to make title subject to the prior interest. The clause is made retrospective by clause 7 (2).

L. P. Act, 1925, s. 140 (2) Agricultural Holdings.

Clause 2. Amends this sub-section by authorising a tenant from year to year of an agricultural holding, to serve on the owners of the severed reversion a notice that he accepts the notice to quit as a notice applicable to the entire holding which will then cease at the end of the current year of the tenancy. This follows the proviso at the end of Agr. H. Act, 1923, s. 27 (1).

"Trust Corporation."

Clause 3. The definition of "trust corporation" (see *e.g.* L. P. Act, 1925, s. 205 (1) (xxviii)) is extended, for the purposes of all the Acts affected, to include the Treasury Solicitor, the Official Solicitor, persons holding an official position prescribed by the Lord Chancellor, and, in regard to charitable trusts, includes local or public authorities similarly prescribed, and other corporations similarly prescribed who satisfy the Lord Chancellor that they act without remuneration, or that their income goes for charitable purposes and that they cannot distribute profits among their members.

Date of effective registration and priority notices.

Clause 4. If a "priority notice" of an intended registration under the L. C. Act, 1925, or the rules thereunder, is given in the prescribed form at least two days before the registration is to take effect, then the registration will, if the application therefor is made within fourteen days after the notice given to the person acting as registrar, take effect from the date on which the charge, instrument or matter was created, entered into, made or arose, and a purchaser will be affected from that date.

Restrictive covenants.

The priority notice will be entered in the appropriate register. This enables, for instance, notice to be given of an intended restrictive covenant so that the registration will take effect as soon as the covenant is entered into.

Two days allowed for completion after a search.

Unless a priority notice is registered, a registration will not take effect till two days after the application has been accepted. Thus if a purchaser obtains a certificate of search he will have two days from the date of the certificate within which to complete in safety. This clause is not retrospective. Further rules can be made for giving effect to it.

Further charges affecting registered land.

Clause 5.—The principles of L. P. Act, 1925, s. 94, have been made applicable to land the title to which is registered. Thus if a first mortgagee is under an obligation (entered on the register) to make a further advance, advances made pursuant to the

obligation will have priority over subsequently registered charges. This clause is not retrospective.

The Schedule to the Bill, which is retrospective, makes the following minor amendments:—

It is made clear that if a purchaser does not have notice that a name and arms or shifting clause has taken effect, he can accept a vesting instrument made in favour of a former tenant for life. S. L. Act, 1925, s. 13.

It will not be necessary if settled land is sold in consideration of a perpetual rentcharge to employ a condition of absolute re-entry if the rent is in arrear for 30 days. S. L. Act, 1925, s. 39.

If a tenant for life surrenders to the next remainderman, the former will lose his powers whether or not the remainderman is an infant. S. L. Act, 1925, s. 105.

Paragraph 1 (6) will not apply to a portions term vested in a mortgagee or other purchaser for money's worth. S. L. Act, 1925, Sch. II.

A fee simple subject to a right of entry will be a "legal estate." L. P. Act, 1925, s. 7.

This sub-section has been redrafted to make it clear that trustees for sale must consult the persons entitled to the income and give effect to their wishes so far as consistent with the general interest of the trust. L. P. Act, 1925, s. 26 (3).

This sub-section has been redrafted to make it clear that in the case of trusts for sale not created by "an instrument," *e.g.*, implied by law or imposed under s. 35, there must be two individuals or a trust corporation to give receipts for capital. L. P. Act, 1925, s. 27 (2).

A mortgagee of part of the property comprised in a lease will be able to exercise the powers conferred by this section provided the rent is equitably apportioned. This renders unnecessary the express powers of attorney given in this volume to convey or acquire the head term. L. P. Act, 1925, s. 89. Powers of attorney in leasehold mortgages.

If a purchaser of a legal estate takes it from a trustee, without notice of a trust, then, though the vesting provisions have transferred the estate to another person, the purchaser will obtain a good title if the trustee or his mortgagees or other persons deriving title under him produce the deeds. This amendment is restrospective. Secret trusts. L. P. Act, 1925, 1st Sch. Pt. II, para. 3.

Nominal leasehold reversions will not vest in a mortgagee or persons deriving title under him, whether or not the right of redemption subsists. L. P. Act, 1925, Sch. I, Pt. II, para. 7 (*a*).

There must be an order for sale or partition in a partition action within 18 months from 1st January, 1926, if the *lis pendens* is to keep the matter open. L. P. Act, 1925, Sch. I, Pt. IV, paras. 1 (10) and (11).

Persons entitled to " one half of the land or upwards " will be able to apply to the court under para. 1 (11).

Trustee Act, 1925, s. 14. (2)

In para. (*a*) of s-s. (2) the words " disposition on " are omitted, to make it clear that there must be two trustees for the purposes of the " statutory trusts " for sale.

Trustee Act, 1925, s. 25 (4).

Powers of attorney executed outside the country can be filed within ten days after receipt in the United Kingdom.

Trustee Act, 1925, s. 26 (1).

In the sentence " which may have accrued *or* been claimed " the word " and " is substituted for " or." This restores the wording of the Act of 1859, and enables distribution to be made with safety unless a claim has been made.

Univ. & Coll. E. Act, 1925, s. 3.

An amendment corresponding to that affecting S. L. Act, 1925, s. 39, *supra*, is proposed.

CHAPTER I.

New Law of Mortgages.

Sect. I.—*The form of a mortgage of freehold and enfranchised lands, and leasehold property.*

Changes effected by the L. P. Act, 1925.

The law and practice relating to legal mortgages of land have been much changed by the L. P. Act, 1925, ss. 85-120, and the 1st Sch., Parts VII and VIII.(*a*)

By this Act all mortgages (not being mere charges unsecured by any estate) existing on the 1st January, 1926, will take effect as demises or sub-demises, or if made thereafter must either be made by a charge by way of legal mortgage, which (s. 87; footnote to Form No. 1, 5th Sch.) places the mortgagee in the same position as if he had a mortgage term, by demise or sub-demise, or must be made by demise or sub-demise.

Position of mortgagor.

It was essential, for the purposes of the scheme of the Act, that the mortgagor should either be given or retain the fee simple or the head term until his right of redemption was barred, otherwise he could not have made a title to the land which a purchaser would have accepted.

After 1925 mortgages will, in fact, represent the true nature of the transaction, which is never intended to change the ownership in the land, but, merely, to give a satisfactory security for a loan.

The procedure adopted was first to remove the objectionable matters affecting mortgages by demise or sub-demise, for instance, by giving the first mortgagee the right to deeds when the mortgagor was in a position to hand them over, and by giving each mortgagee a power to sell and convey the fee simple or the head term affected by his mortgage, and a power to acquire it by foreclosure or under the Limitation Acts. The way having thus been cleared, it was permissible, legislating by reference, to introduce a simpler method, namely, the charge by way of legal mortgage, which, in practice, will no doubt be known as a "legal charge." It is not correct to say that this legal charge is a new thing to the law and accordingly to be

Legal charges.

(*a*) For a summary of these changes see Chap. I, vol. I.

avoided. On the contrary it is strictly a matter of evolution and adaptation. It is for those, now apparently a small minority, who say that the longer forms by demise or sub-demise should be adopted to justify their attitude, for the simplicity of the "legal charge" is admitted. Not only is the charge in itself simple, but its use simplifies the rest of the deed, for instance, the same form is available whatever may be the tenure of the land.

Forms applicable to freehold and enfranchised land.

The forms then applicable after 1925 to legal mortgages of freehold and enfranchised land will be either charges by way of legal mortgage, where the mortgagee is treated as if he had a mortgage term vested in him, or a mortgage by demise subject to a provision for the cesser of the mortgage term if the money is paid on or before the stipulated date, generally six months from the date of the mortgage. In the case of legal charges, not being statutory mortgages, it may be expedient to state expressly that the legal right of redemption ceases at the end of the six months. Whichever form of mortgage is adopted, the subsequent mortgages, taken in similar forms, will be legal mortgages.

Puisne mortgages.

For the protection of mortgagees who do not obtain the deeds, their mortgages, which are to be called puisne mortgages, will be registered either in a local deeds register or as land charges. If the puisne mortgage is made after 1925 its priority will rank according to date of registration in place of date of execution. In some respects this is a revolution, but a necessary one, seeing that there can be a succession of legal mortgages. If a puisne mortgage is made before 1926 it can and should, unless the mortgagor and all the mortgagees are represented by the same firm who held the deeds, be registered as soon as possible as a land charge, save where already registered in a local deeds registry, for until so registered it is not, as against a purchaser for value, treated as a legal mortgage. In any case it must be registered within one year from the first transfer which occurs after 1925.

Mortgages of enfranchised land.

Mortgages of land enfranchised by the L. P. Act, 1922, will be in the same form as mortgages of freeholds, but until the manorial incidents are extinguished it will be necessary to produce the mortgage to the steward before the expiration of six months from date of mortgage, for endorsement and to make the customary payments. The mortgage must show whether or not it is made subject to the manorial incidents or to a compensation rentcharge, and whether the lord's rights to minerals as well as sporting rights have or have not been acquired by the owner of the land.

Mortgages of leaseholds.(*b*)

A legal mortgage of leaseholds will be effected either by a legal charge or by a sub-demise for a sub-term less than the residue of the term vested in the mortgagor, and subject to a provision for cesser on redemption: L. P. Act, 1925, s. 86. Whichever form is used, if the mortgage relates to part only of the property comprised in the lease, and the rent has not been apportioned, an irrevocable power of attorney must be given to dispose of or acquire the head term.

Purported conveyance of the fee simple or assignment of a term.

The provisions of the L. P. Act relating to the form of mortgages cannot be evaded by any purported conveyance inconsistent with them, such as a conveyance of the fee simple in place of a grant of a term of years, or the assignment of a term in place of the grant of a sub-term. Such conveyance or assignment will only confer a term of years or a sub-term: ss. 85 (2) and 86 (2).

Attornment clause.

A charge by way of legal mortgage is treated as a legal estate (s. 1) and a legal chargee is given (s. 87) an express power to take proceedings to obtain possession and is in the same position as if he had a mortgage term, hence the mortgagor can attorn tenant to him. It may also be expedient for the mortgagor to grant an irrevocable power to consent to judgment for possession.

Protection of mortgagee by sub-demise or legal chargee from forfeiture.

The court has power (s. 146) to protect an underlessee against forfeiture of his lease for breaches committed by the head lessee. Under this section it may vest land in a mortgagee by sub-demise for the residue of the mortgage term, where the security is endangered by any act or default by the mortgagor resulting in a forfeiture of the head term; but as regards a lease the court will not interfere unless the lessor actually threatens to re-enter. The position is the same for a chargee by way of legal mortgage, as he has the same protection and remedies as an underlessee: s. 87. He is treated as if he had a legal estate or term: s. 1 (2) (4); 5th Sch., Form No. 1, footnote.

Trust of head term no longer required.

Before 1926 it was usual to make the mortgagor declare himself a trustee of the head term for the mortgagee subject to the right of redemption. This was supplemented by a power for the mortgagee to remove the mortgagor from the trusteeship and to appoint a new trustee; this is no longer required, for the mortgagee is given power, save where the rent is not legally apportioned, to convey the head term and to acquire it on

(*b*) As to the respective rights of the mortgagor and mortgagee under a mortgage of leaseholds with fixtures: *Re Rogerstone B. and S. Co.* [1919], 1 Ch. 110; 88 L. J. Ch. 49.

foreclosure or under the Limitation Acts: s. 89. Where the rent is not apportioned and part only of the premises comprised in a lease is charged, it will still be necessary to give an irrevocable power of attorney for the above purposes to the mortgagee and the persons deriving title under him.

Trusts of mortgage debts kept off the title.

Persons dealing with mortgaged land will no longer be concerned with the trusts of the mortgage debt, even though they may have notice of such trusts; a purchaser may assume that the mortgagees are entitled to deal with the mortgaged property and to give receipts for the purchase-money, &c.: L. P. Act, 1925, s. 113. A ten-shilling stamp on a transfer does not give notice of a trust to a purchaser of the land, even though the amount of the debt transferred would in other circumstances necessitate a stamp of greater amount (s. 112); but the stamp should be adjudicated.

Registration of puisne mortgages.

The most important matter to bear in mind in regard to mortgages is the necessity to register what are now called "puisne mortgages," namely, mortgages not protected by deposit of the material documents of title, when not registered in a local deeds registry, as land charges under L. C. Act, 1925, s. 10, Class C (i). All "puisne mortgages" made after 1925 must be so registered, for they rank according to date of registration. Even if created before 1926, it may in some cases be expedient to register them at once, otherwise they cannot, as against a purchaser without notice, rank as legal mortgages, though made such by L. P. Act, 1925, 1st Sch., Pts. VII or VIII.

Mortgages by deposit, or to secure further advances.

Mortgages by deposit of documents can, under L. P. Act, 1925, s. 13, be made with the same safety as before 1926; indeed, the facilities are greater, first, because the intending mortgagee can acquire greater protection than hitherto, by obtaining official certificates of search, before any advance is made, under L. C. Act, 1925, and secondly, because in the case of mortgages to secure current accounts or other further advances the position is cleared up by L. P. Act, 1925, s. 94.

Trustees are not liable for not insisting on the insertion in a mortgage to themselves of a covenant to repair, or of a clause precluding the borrower from granting occupation leases, or for neglecting to inspect the property during the subsistence of the security: *Shaw* v. *Cates* [1909], 1 Ch. 389; 78 L. J. Ch. 226.

Personal liability of trustees.

In mortgages by trustees it is not usual for trustees to enter into personal covenants. An absolute covenant was held binding, notwithstanding that it was qualified by the words "but not so

as to create any personal liability" : *Watling* v. *Lewis* [1911], 1 Ch. 414 ; 80 L. J. Ch. 242 ; but this decision has been practically overruled by Buckley, L.J. : *Re Robinson* [1912], 1 Ch. 717, 728 ; 81 L. J. Ch. 393.

Provision for reducing rate of interest on punctual payment.

It is common, with a view to secure the punctual payment of interest, to provide for its payment, in the first instance, at a higher rate than is intended to be taken, with a proviso reducing it to the stipulated rate, in case of punctual payment on the proper half-yearly day, or within a short time (generally thirty days) thereafter; but, if the words "punctual payment" are unqualified, payment must be made on the day stipulated, and the receipt by the mortgagee of interest on a day subsequent to that stipulated, and acceptance of the lower rate of interest, does not imply a waiver of the stipulation in respect of future payment of interest : *Maclaine* v. *Gatty* [1921], 1 A. C. 376 ; 90 L. J. P. C. 73. The more direct plan would be to make the interest payable, in the first instance, at the stipulated rate and to provide for an increased rate in default of punctual payment. Such a provision, however, would not answer the purpose, for it would be regarded as a penalty and be relieved against : *Nicholls* v. *Maynard* (1747), 3 Atk. 519. Under the proviso reducing the rate of interest on punctual payment, a mortgagee in possession may charge the higher rate, though he receives rent more than sufficient to pay the interest, and even though no interest was in arrear at the time of his taking possession. (*c*) A provision for capitalisation of interest in arrear for thirty days, does not take effect if the mortgagee in possession receives sufficient rent before the thirty days have expired : *Wrigley* v. *Gill* [1906], 1 Ch. 165 ; 75 L. J. Ch. 210.

Mortgagee in possession.

Capitalisation of interest.

Provision for continuing loan for a term certain.

Frequently it is stipulated, particularly where the loan is one of a large amount, that the loan shall remain on the security for a term certain. This is effected by making the principal payable, in the first instance, at the usual time, with provisions, first, that the mortgagee shall not call in the money before the end of the term agreed on, if the interest is punctually paid, and the mortgagor's covenants and statutory obligations are duly performed in the meantime ; and, secondly, that the mortgagor

(*c*) *Union Bk.* v. *Ingram* (1880), 16 Ch. D. 53 ; 50 L. J. Ch. 74 ; *Bright* v. *Campbell* (1889), 41 Ch. D. 388 ; see *Wrigley* v. *Gill* [1906], 1 Ch. 165 ; 75 L. J. Ch. 210. As to the rights of the parties where a receiver, through ignorance of the provision reducing interest, pays it at the higher rate : *Re Jones* [1914], 1 Ir. R. 188.

shall not be at liberty to pay off the money before the end of the term agreed on, unless the mortgagee is willing to receive it. Trustees are, under T. Act, 1925, s. 10 (1), authorised to lend for a term not exceeding seven years certain, if interest is paid within thirty days, and provided there is no breach of covenant for the maintenance and protection of the property.

Repayment by instalments.

A similar plan should be adopted where the arrangement is that the money shall be repaid by instalments.

Absolute covenants for title in mortgages.

Under L. P. Act, 1925, s. 76, and 2nd Sch., Pt. III, absolute covenants for title can be implied in every legal mortgage, whether by demise, sub-demise, or charge.

Mortgage should contain covenant to insure, and to produce policy and receipts to mortgagee.

Having regard to the statutory provisions as to insurance where the mortgage is by deed,(*d*) a mortgage deed comprising buildings should as a general rule contain a covenant by the mortgagor to insure to the amount considered necessary, and to deliver or produce the policy and the receipt to the mortgagee on demand; but it is unnecessary to insert any further provision enabling the mortgagee to insure in case of the mortgagor's default. Under L. P. Act, 1925, s. 108, a mortgagee may require a mortgagor to apply any insurance money received towards making good the loss in respect of which it was paid or in discharging the mortgage debt.

Attornment clause, to what extent void under Bills of Sale Act.

It was formerly usual, when the mortgagor was in actual occupation of the mortgaged property, to make him attorn tenant to the mortgagee at a rent at least equal to the interest, so as to enable the latter to distrain for such interest as rent; but it is provided by the Bills of Sale Act, 1878, s. 6, as follows:—

> Every attornment instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only, shall be deemed to be a bill of sale within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress. Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

The exception in the proviso at the end of the above section does not apply where the attornment clause is inserted in the

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(*d*) L. P. Act, 1925, s. 108; and as to fire insurance see Fires Prevention (Metropolis) Act, 1774, which is of general application. *Sinnot* v. *Bowden* [1912], 2 Ch. 414; 81 L. J. Ch. 832.

mortgage itself, but only to one where a mortgagee takes possession after the mortgage and then demises to the mortgagor.(*e*)

To what extent valid.

An attornment clause in an unregistered deed of mortgage is therefore void so far as it gives power to distrain on personal chattels, but, so far as it creates the relation of landlord and tenant, it is valid; if it reserves power for the mortgagee to determine the tenancy at any time, he may (*f*) obtain a summary judgment for the recovery of the land under O. 14, r. 10, or a writ specially indorsed under O. 3, r. 6 (F). Hence the clause is still useful where the mortgagor is in possession, for it enables the mortgagee to oust him and go into possession; its insertion is recommended, substituting, however, a nominal for a substantial rent. It may also be expedient to take an irrevocable power of attorney from the mortgagor to consent to a judgment or order giving possession.

Investigation of title, searches, and enquiry as to value.

A mortgagee should make the same investigation of title and obtain the same certificates of search as a purchaser on a sale.(*g*) He should also satisfy himself as to the value of the property and make full enquiries of the tenants and occupiers, otherwise he may suffer, *e.g.*, where under a lease executed before the mortgage the tenant has paid all the rent in advance: *Green* v. *Rheinberg* (1911), 104 L. T. 149. The ordinary rule is that the money advanced should not exceed two-thirds of the value in the case of freehold land, and in the case of house property half the value,(*h*) but this rule does not generally apply to business premises: *Palmer* v. *Emerson* [1911], 1 Ch. 758; 80 L. J. Ch. 418.

A mortgagee has a free hand, and if the security is not ample the investigation may be more strict than in the case of a purchaser. In any case the enquiries as to occupation should be carefully made. If the property is vacant it must be seen that the deeds are handed over, for it is possible that the legal estate may have been divested out of a bare trustee by L. P. Act, 1925,

Secret trusts.

(*e*) *Re Willis* (1888), 21 Q. B. D. 384; 57 L. J. Q. B. 634; *Green* v. *Marsh* [1892], 2 Q. B. 330; 61 L. J. Q. B. 442.

(*f*) *Mumford* v. *Collier* (1890), 25 Q. B. D. 279; 59 L. J. Q. B. 552; *Kemp* v. *Lester* [1896], 2 Q. B. 162; 65 L. J. Q. B. 532.

(*g*) *Cundiff* v. *Fitzsimmons* [1911], 1 K. B. 513; 80 L. J. K. B. 422, which shows that a mortgagee was formerly liable, though never in possession, for the payment of a legal rentcharge. After 1925 a mortgagee will not be a terre tenant, he will either have a mortgage term or a charge.

(*h*) As to the duty of trustees see T. Act, 1925, s. 8.

1st Sch., Pt. II. A requisition as to this may be required unless the land was conveyed on trust for sale or to the uses of a settlement.

Mortgage to money-lenders.

A mortgage to a money-lender must be taken in his registered name: see *Peizer* v. *Lefkowitz* [1912], 2 K. B. 235; 81 L. J. K. B. 718, otherwise the security is void as against the money-lender under the Money-lenders Act, 1900, s. 2; but the mortgage is deemed to be valid in favour of any assignee or holder (not being a money-lender) for value in good faith without notice of any such defect: Money-lenders Act, 1911, s. 1, which meets the decision in *Re Robinson* [1911], 1 Ch. 230; 80 L. J. Ch. 309. Sub-s. 2 of s. 1 of the Act of 1911 provides that a person shall not be fixed with notice because a search in the register kept under the Act of 1900 would have disclosed the defect and the provisions of the Conv. Act, 1882, s. 3 (now replaced with amendments by L. P. Act, 1925, s. 199), as to notice are applied.

Sect. II.—*Equitable mortgages by deposit of title deeds.*

Equitable mortgage by deposit of deeds.

An equitable mortgage of land, or other property may be created by an agreement in writing, or by a parol agreement accompanied or followed by a deposit of title deeds.(*i*) The parol agreement by itself would, as regards land, be ineffective, as contrary to L. P. Act, 1925, s. 40, but the deposit is an act of part performance taking the case out of that section: *Re Beetham* (1887), 18 Q. B. D. 766; 56 L. J. Q. B. 635.

A deposit of the material deeds (*j*) or even of one old deed falsely stated to be the only deed, there being in fact many subsequent ones: *Dixon* v. *Muckleston* (1872), L. R. 8 Ch. 155; 42 L. J. Ch. 210, has been held sufficient.

Where there is a deposit of deeds on an advance, the Court will presume an agreement that an equitable mortgage was intended, but the mere production by a creditor of title deeds without explanation or evidence to show any connexion between the debt and the possession of the title deeds is insufficient: *Chapman* v. *C.* (1851), 13 Beav. 308; 20 L. J. Ch. 465.

When a deposit covers future advances.

A deposit of title deeds is *prima facie* a security only for the amount then due, but it may be extended to future advances

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(*i*) *Edge* v. *Worthington* (1786), 1 Cox, 211; *Ex p. Mountfort* (1808), 14 Ves. 606.

(*j*) *Lacon* v. *Allen* (1856), 3 Drew. 579; 26 L. J. Ch. 18; *Roberts* v. *Croft* (1857), 2 De G. & J. 1; 27 L. J. Ch. 220.

either by evidence that there was a parol agreement at the time that it should be so extended, or by evidence that the further advance was made on the security of the deeds.(*k*)

Effect of deposit of lease.

An equitable mortgagee, by deposit of a lease, cannot be compelled by the lessor to take a legal assignment; he does not become liable to the lessor in respect of the rent and covenants in the lease, though he may have taken possession or paid rent.(*l*)

Possession of documents.

Under L. P. Act, 1925, s. 13, nothing in that Act affects the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land. In fact, under that Act, the possession of documents may confer claims in priority to those attributable to the possession of the legal estate.

Enforcement of equitable mortgages.

Under s. 90, when an order for sale has been made on the application of an equitable mortgagee the court may not only appoint a person to convey the legal estate or make a vesting order, but may, in effect, convert the equitable mortgage into a legal mortgage by vesting a mortgage term in the mortgagee. Independently of that section the estate owner may be bound to give legal effect to a mortgage (s. 3 (2)), and the court can enforce this obligation: s. 3 (5). Corresponding provisions are contained in S. L. Act, 1925, s. 16 (4)-(7), in regard to settled land. The question in each case to be decided is, ought the mortgage to be made paramount to the trust for sale or the settlement (if any) affecting the land. Again wide powers are given to the court to enforce rights against personal representatives by Ad. of E. Act, 1925, s. 38 (2); these powers authorise the court to order a mortgage or charge to be made, and apply (sub-s. 3) whether the testator or intestate dies before or after 1926.

Priorities of equitable mortgages.

The priorities of equitable mortgages, affecting a legal estate in land, made after 1925 (not being mortgages of registered land) depend on the date of registration of a land charge unless the mortgage is protected by the deposit of documents: L. P. Act, 1925, s. 97. This is the case whether or not the land is in Middlesex or Yorkshire, for an equitable mortgage is not within the jurisdiction of a local deeds registry: *ib.*, s. 11.

(*k*) *Ex p. Whitbread* (1812), 19 Ves. 209; *Ex p. Kensington* (1813), 2 V. & B. 79; *Ex p. Hooper* (1815), 1 Mer. 7.

(*l*) *Moore* v. *Greg* (1848), 2 Phil. 717; 18 L. J. Ch. 15; *Friary Holroyd, &c., Breweries* v. *Singleton* [1899], 1 Ch. 86, 90 (reversed on facts [1899], 2 Ch. 261); 68 L. J. Ch. 13, 622.

SECT. III.—*The rights and remedies of mortgagor and mortgagee as regards redemption, foreclosure, and judicial sale and the powers of a mortgagor in possession.*

Right of mortgagor to redeem.

If, as is usually intended, the loan is not paid at the time appointed in the proviso for cesser, the mortgagee may take steps to enforce his security, by sale, foreclosure, or possession, or by the appointment of a receiver. In equity however the mortgagor may at any time redeem on payment to the mortgagee of the principal and interest due, together with the costs properly incurred by him, in relation to the security. This equitable right of redemption may be barred by foreclosure or by long possession or by the exercise of the mortgagee's power of sale.

Foreclosure.

A mortgagee of land, whether legal or equitable, may at any time after the day named for payment in the mortgage deed commence an action claiming foreclosure. The court will thereupon order an account to be taken of the amount due and will name a time at the end of which, if the money is not paid, the mortgagor will be foreclosed. This time will, however, be enlarged in certain cases. After an order absolute for foreclosure has been made the mortgagee becomes absolute owner of the mortgaged property. In the case of an equitable mortgage the judgment will order the mortgagor to convey the legal estate.(*m*) Under L. P. Act, 1925, ss. 88 (2) and 89 (2), the order for foreclosure will, in the case of the legal mortgages to which those sections apply, vest the fee simple or the leasehold reversion in the former mortgagee, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is made, and subsequent mortgage terms or charges will be extinguished as well as any mortgage term vested in the applicant. The order does not give rise to a forfeiture for want of a licence to assign.

Sale in action for redemption or foreclosure.

Under L. P. Act, 1925, s. 91, an order for sale may be obtained in an action for redemption or foreclosure ;(*n*) in this case the court may create and vest a mortgage term in the mortgagee to enable him to carry out the sale as if the mortgage had been made by way of legal mortgage.

Foreclosure.

(*m*) *James* v. *J.* (1873), 16 Eq. 153 ; 42 L. J. Ch. 386. The right of foreclosure does not extend to a pledge of personal chattels, the remedy in respect to which is sale : *Carter* v. *Wake* (1877), 4 Ch. D. 605 ; 46 L. J. Ch. 841 ; but does extend to a deposit of share certificates : *Harrold* v. *Plenty* [1901], 2 Ch. 314 ; 70 L. J. Ch. 562.

(*n*) *Lloyds Bank* v. *Colston* (1912), 106 L. T. 420. As to making all co-mortgagors parties *Gee* v. *Liddell* [1913], 2 Ch. 62 ; 82 L. J. Ch. 370.

The power of ordering a sale conferred on the court by s. 91 applies to equitable as well as to legal mortgages,(*o*) though s. 90 primarily relates to equitable mortgages. The power may be exercised at any time before foreclosure.(*p*) The court can order a sale on the application of any person interested either in the mortgage money or in the right of redemption, without previously determining the priority of encumbrances and notwithstanding the dissent of any other person, or that any person interested does not appear in the action. The court has an absolute discretion to decree a sale on such terms as it thinks fit, and may order the deposit of any sum of money as security for the due performance of such terms or to provide for the expenses of sale. The court will protect other mortgagees by fixing a reserve price sufficient to cover the amounts due to them: *Woolley* v. *Colman* (1882), 21 Ch. D. 169; 51 L. J. Ch. 854. Where the action is brought by a person interested in the right of redemption, the court, on the application of a defendant, may order the plaintiff to give such security for costs as the court thinks fit. The court may also give the conduct of the sale to any defendant, whether he is a mortgagor or mortgagee, or allow the mortgagor to sell out of court, although the mortgagee has given him notice requiring payment: *Brewer* v. *Square* [1892], 2 Ch. 111; 61 L. J. Ch. 516. An order for foreclosure has been made in a case where an order for sale had already been made: *Lloyds Bank* v. *Colston* (1912), 106 L. T. 420.

Mortgagee entitled to six months' notice or six months' interest.

A mortgagor seeking to redeem after the day appointed in the proviso for cesser must give to the mortgagee six months' notice of his intention to pay off the debt, or pay him six months' interest in lieu of notice: *Browne* v. *Lockhart* (1840), 10 Sim. 420, 424; 9 L. J. Ch. 167. But it has been held that this rule does not apply to an equitable mortgage by deposit: *Fitzgerald's Trustee* v. *Mellersh* [1892], 1 Ch. 385; 61 L. J. Ch. 231.

Rule does not apply to mortgage by deposit.

If a mortgagee takes proceedings to realise his security or demands payment he is bound to accept the principal money and costs with interest up to the time of payment. He cannot claim further interest in lieu of the six months' notice.(*q*) This applies

(*o*) *Wade* v. *Wilson* (1883), 22 Ch. D. 235; 52 L. J. Ch. 399; *Oldham* v. *Stringer* (1884), W. N. 235; 51 L. T. 895; *Green* v. *Biggs* (1885), W. N. 128; 52 L. T. 680.

(*p*) *Union Bank* v. *Ingram* (1882), 20 Ch. D. 463; 51 L. J. Ch. 508; *Davies* v. *Wright* (1886), 32 Ch. D. 220.

(*q*) *Re Alcock* (1883), 23 Ch. D. 372; 49 L. T. 240; *Edmondson* v. *Copland* [1911], 2 Ch. 301; 80 L. J. Ch. 532.

to a mortgagee entering into possession : *Bovill* v. *Endle* [1896], 1 Ch. 648 ; 65 L. J. Ch. 542. But where the mortgage was of a reversionary interest in a trust fund, and the trustees, on its falling into possession, petitioned the court that the mortgage debt should be paid out of the fund, it was held that the ordinary rule applied, and that the mortgagee was entitled to six months' notice or six months' interest : *Smith* v. *S.* (1891), 3 Ch. 550 ; 60 L. J. Ch. 694. Where in an administration action (not instituted by the mortgagee) an order is made for sale free from the incumbrances of those who consent to the sale, and a mortgagee consents, he is entitled to six months' interest from the date of his consent, and if the sale does not take place within the six months then to further interest up to the time of payment : *Day* v. *D.* (1862), 31 Beav. 270 ; 31 L. J. Ch. 806. A mortgagee should be advised to give a consent to a sale, in the prescribed form, and allow the money to be paid into court, provided the reserve price is sufficient to cover the amount owing to him. His refusal may result in a subsequent loss if the property deteriorates in value.

Rights of mortgagee in administration action.

A mortgagee may add to the mortgage debt all costs incurred under or in relation to his security, but not the costs of negotiating the loan and preparing the mortgage deed. These, if not deducted from the money lent before it is handed over, as is usually done, are a simple contract debt due at common law from the mortgagor to the mortgagee.(*r*)

Costs of preparing mortgage cannot be added to debt.

It sometimes happens that when a mortgagor seeks to redeem, the mortgagee claims to be paid not only the money secured by the particular mortgage, but also the money secured by some other mortgage—in other words, to consolidate the two. The law as to consolidation applicable to mortgages made before 1882, is, that if a person makes two mortgages of different properties to the same person to secure different debts, or if the mortgages are in the first instance made to two different persons, and they subsequently become vested by transfer in the same person, the mortgagor cannot redeem one without the other, assuming that the time has come for redeeming both : *Pledge* v. *White* [1896], A. C. 187 ; 65 L. J. Ch. 449. The rule applies not only against the mortgagor, but against a person to whom the mortgagor has conveyed the right of redemption, though the conveyance is made before the mortgages become united

Consolidation of mortgages before 1882.

(*r*) *Wales* v. *Carr* [1902], 1 Ch. 860 ; 71 L. J. Ch. 483 ; *Re Foster* [1920], 3 K. B. 306 ; 89 L. J. K. B. 958.

in title: *Pledge* v. *White*, *supra*. The rule does not, however, apply if the conveyance of the right of redemption has been made before the mortgage of the other estate: *Sharp* v. *Rickards* [1909], 1 Ch. 109; 78 L. J. Ch. 29. The fact that rights of redemption, originally separate, have come into the same hands does not give a right to consolidate.(*s*)

The rule altered by L. P. Act, 1925, re-enacting Conv. Act, 1881.

By L. P. Act, 1925, s. 93 (replacing Conv. Act, 1881, s. 17)—

(1) "A mortgagor seeking to redeem any one mortgage is entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem."

This applies only when the mortgages or one of them are or is made after 1881, and so far as a contrary intention is not expressed in them or one of them: *Re Salmon* [1903], 1 K. B. 147; 72 L. J. K. B. 125. Thus, by express agreement in a mortgage made after 1881, it may become liable to be consolidated with a mortgage made at any time.

Consolidation by agreement.

It follows that if a person, having mortgaged Blackacre, borrows from the same person a further sum on the security of Whiteacre, intending that the latter sum shall be charged on Blackacre also, the second deed should refer to the first and expressly make both properties subject to both debts.(*t*)

A general right to consolidate is seldom reserved, save in mortgages by builders, &c., or to building societies, where it is anticipated that a series of loans will be made from time to time on different properties.

A stipulation in an equitable mortgage to execute a legal mortgage "in such form" as the mortgagee may require does not authorise the insertion of a clause excluding s. 93: *Farmer* v. *Pitt* [1902], 1 Ch. 954: 71 L. J. Ch. 500.

Notice of intended sale.

When the equitable right to consolidate several mortgages exists, and the mortgagee, with a view to exercising his power of sale over the property comprised in one of the mortgages, gives the notice required by s. 103 of the L. P. Act, 1925, the right to consolidate is not thereby lost: *Griffith* v. *Pound* (1890), 45 Ch. D. 553; 59 L. J. Ch. 522.

Mortgagee lending further sum to mortgagor.

If a mortgagee of property lends a further sum to the mortgagor on the security of the same property, the mortgage cannot

(*s*) *Jennings* v. *Jordan* (1881), 6 A. C. 698; 51 L. J. Ch. 129; *Minter* v. *Carr* [1894], 3 Ch. 498; 63 L. J. Ch. 705; *Hughes* v. *Britannia, &c., Society* [1906], 2 Ch. 607; 75 L. J. Ch. 739.

(*t*) This is better than inserting in one or both of the deeds a clause in general terms negativing the operation of s. 93 of the Act.

(unless the further advance is postponed under s. 94) be redeemed without paying the further advance. This rule applies to mortgages of equitable personalty as well as to mortgages of real estate: *Watts* v. *Symes* (1851), 1 D. M. & G. 240; 21 L. J. Ch. 713.

New rules as to further advances.

Under L. P. Act, 1925, s. 94, the following rules apply to further advances made on the security of land after 1925—

First, whether or not the prior mortgage was made expressly for securing a current account or other further advances—the prior mortgagee can safely make further advances in priority to subsequent mortgages—

(*a*) if an arrangement has been made with the subsequent mortgagees;

(*b*) if he had no notice of the subsequent mortgages when the further advance is made. But (subject as mentioned below in regard to mortgages expressly made for securing further advances) the mere fact of registering a land charge or of registering a memorial in a deeds register gives notice of a mortgage;

(*c*) where the mortgage imposes an obligation to make further advances; here further advances are clearly contemplated and further sums may be lent up to the limit, notwithstanding notice.

Secondly, where the prior mortgage was made for securing a current account or other further advances.

In this case the prior mortgagee is not to be deemed to have notice by reason of registration if the subsequent mortgage was not registered at the date of the original advance or the date of the last search, whichever date last occurs.

The result is that, in default of an arrangement with the subsequent mortgagees, a search must be made by the prior mortgagee before a further advance, unless—

(i) there is an obligation to make a further advance, in which case the obligation can be complied with regardless of notice, whether express or implied; or,

(ii) the mortgage is made to secure further advances at the discretion of the prior mortgagee, in which case he can continue to make advances until he receives express notice (as opposed to notice implied by a subsequent registration) of the subsequent mortgage.

In regard to registered land, the matter is governed by L. R. Act, 1925, s. 30.

Simple contract and specialty debts.

Formerly, simple contract and specialty debts could be tacked to a mortgage debt as against the heir, devisee, or executor of a mortgagor, where the right of redemption was assets ;(*u*) but not so as to give the mortgagee a preference over other creditors, where the assets were insufficient.(*v*)

A further advance could not be tacked to a prior legal mortgage upon the strength of a parol agreement to that effect : *Ex p. Hooper* (1815), 1 Mer. 7.

Abolition of tacking.

Subject to the rules as to further advances mentioned above all tacking is abolished : L. P. Act, 1925, s. 94.

Persons entitled to redeem.

All persons having an estate or interest in the right of redemption are entitled to redeem : *Pearce* v. *Morris* (1869), 5 Ch. 227 ; 39 L. J. Ch. 342. Consequently the trustee of a bankrupt may redeem, as well as subsequent mortgagees and judgment creditors. So, also, a tenant under a lease granted by the mortgagor after the date of the mortgage, and not binding on the mortgagee, may redeem.(*w*)

Mortgagee on redemption must, if required, transfer mortgage.

A mortgagee must accept payment of the mortgage debt from the mortgagor or any subsequent mortgagee, and either surrender the mortgage term, or, if required, transfer the mortgage debt and the security to any third person (L. P. Act, 1925, s. 95), but he cannot safely transfer to the mortgagor or his nominee without giving notice to subsequent incumbrancers of whose charges he has notice.(*x*)

This rule does not apply to a mortgagee in possession ; he can only safely transfer his security under the direction of the court : *Hall* v. *Heward* (1886), 32 Ch. D. 430 ; 55 L. J. Ch. 604.

Endorsed receipt.

When paid off the safest plan, when there is any doubt whether a transfer is permissible, is for the mortgagee to endorse a receipt on the mortgage under L. P. Act, 1925, s. 115, for the receipt will operate as a discharge or as a transfer, as the case may require. As to keeping alive mortgages, for the benefit of a limited owner, see *ib.*, s. 116.

Where a mortgagee refuses legal tender of the mortgage

(*u*) *Rolfe* v. *Chester* (1855), 20 Beav. 610 ; 25 L. J. Ch. 244 ; *Thomas* v. *T.* (1856), 22 Beav. 341 ; 25 L. J. Ch. 391 ; *Re Allen* [1896], 2 Ch. 345 ; 65 L. J. Ch. 760.

(*v*) *Talbot* v. *Frere* (1878), 9 Ch. D. 568 ; 27 W. R. 148 ; *Re Gregson* (1887), 36 Ch. D. 223 ; 57 L. J. Ch. 221.

(*w*) *Tarn* v. *Turner* (1888), 39 Ch. D. 456 ; 57 L. J. Ch. 1085 ; *cf.* L. P. Act, 1925, s. 99.

(*x*) *Re Magneta Time Co.* [1915], 84 L. J. Ch. 814. The mortgagor cannot set up a mortgage so as to prejudice his subsequent incumbrancers.

money, interest ceases to run, and the mortgagee will be liable to pay the costs of a redemption action.(*y*)

Sureties.

Sureties for the payment of the mortgage debt may also redeem; and if a mortgagee, after the surety has joined, advances a further sum to the mortgagor on a further charge of the property, the surety can redeem the mortgage without paying the further advance as well as the original sum: *Forbes* v. *Jackson* (1882), 19 Ch. D. 615; 51 L. J. Ch. 690. Where however distinct sums are advanced at the same time on distinct securities, and a third person becomes surety for one of the sums with knowledge of the whole transaction, the mortgagee may, subject to the provisions of L. P. Act, 1925, s. 93 (restrictions on consolidation), be entitled to consolidate both the debts, and retain the securities for them against the surety until both sums are paid.(*z*)

Sale of right of redemption.

On the sale of a right of redemption the purchaser is not personally liable to the mortgagee: *Re Errington* [1894], 1 Q. B. 11, but should covenant to indemnify the vendor: *Bridgman* v. *Daw* [1892], 40 W. R. 253. Such a covenant will be implied: *Waring* v. *Ward* (1802), 7 Ves. 332; but an express covenant ousts the implied liability: *Mills* v. *United Counties Bank* [1912], 1 Ch. 231; 81 L. J. Ch. 210. Such a covenant for indemnity is not assignable: *Rendall* v. *Morphew* [1914], 84 L. J. Ch. 517.

When a mortgagor sells the right of redemption, and the purchaser borrows a further sum.

If A. mortgages to B., and then sells and conveys the right of redemption to C., and C. afterwards further charges to B. for an additional advance, A. may be sued by B. on the covenant in the original mortgage deed, but if he pays, he is entitled to have the property conveyed to him without paying the further advance made by B. to C. In other words, he is entitled to what is in effect a transfer of the first mortgage: *Kinnaird* v. *Trollope* (1888), 39 Ch. D. 636; 57 L. J. Ch. 905.

Tenant for life.

Where a right of redemption is settled, the tenant for life, or other limited owner in possession, has a right to redeem in preference to persons entitled in remainder, who cannot redeem without his consent; (*a*) but, having redeemed, he cannot compel

(*y*) *Graham* v. *Seal* [1919], 88 L. J. Ch. 31; as to legal tender for the purposes of redemption: S. C.

(*z*) *Farebrother* v. *Wodehouse* (1856), 23 Beav. 18; 26 L. J. Ch. 81, 240. See *Nicholas* v. *Ridley* [1904], 1 Ch. 192; 73 L. J. Ch. 145.

(*a*) *Ravald* v. *Russell* (1830), Younge, 9; *Prout* v. *Cock* [1896], 2 Ch. 808; 66 L. J. Ch. 24. An endorsed receipt may operate as a transfer: L. P. Act, 1925, s. 115.

those in remainder to redeem him. He may make the remaindermen parties to a redemption action instituted by him against the mortgagor, so that they may be present at the taking of the accounts; he must, however, pay the costs of such remaindermen, and add them to his mortgage, and on his death his representative may bring an action for foreclosure against the remaindermen: *Riley* v. *Croydon* (1864), 2 Dr. & Sm. 293. His proper course is to take a transfer of the mortgage, which, to avoid questions, should contain a declaration that the mortgage debt is to be kept on foot for the benefit of his estate. His rights are kept alive by L. P. Act, 1925, s. 116. As a rule, however, mortgages affecting settled land are paid off out of capital money.

When deemed a principal debtor.

Where a tenant for life in exercise of his statutory powers mortgages the settled land and covenants to pay principal and interest with a proviso making the mortgaged premises the primary security, but not so as to affect the rights of the mortgagee, the tenant for life is, as between himself and the mortgagee, not a surety, but a principal debtor: *Nicholas* v. *Ridley* [1904], 1 Ch. 192; 73 L. J. Ch. 145. As to his powers to raise money on mortgage: S. L. Act, 1925, s. 71.

Representative of mortgagor.

Formerly the personal representative of a deceased mortgagor of real estate was not (except under the L. T. Act, 1897: *Re Harrowby and Paine* [1902], W. N. 137) entitled to redeem in that capacity: *Catley* v. *Sampson* (1864), 34 L. J. Ch. 96. After 1925, unless a testator directs otherwise, the personal representatives have full power to redeem a mortgage in due course of administration where the mortgaged property passes to them under Ad. of E. Act, 1925, Pt. I.

Charges on the property (not merely real estate) of the deceased are primarily payable out of the property charged: s. 35; unless the deceased has given other directions.

Former penalty if mortgagor made second mortgage, concealing the first.

The Statute 4 W. & M. c. 16, has been repealed: L. P. Act, 1925, 7th Sch. The repeal was effected because the statute had been rendered obsolete by the L. P. Act, 1925, s. 97; 1st Sch., Pt. VII, para. 6; Pt. VIII, para. 5; L. C. Act, 1925, s. 10, Class C (i) (7). The general effect of these provisions is to make it impossible for a puisne mortgagee to be prejudiced by a secret prior mortgage, for a puisne mortgagee, not being protected by the possession of the title deeds, will either register his mortgage in a local deeds register or register a land charge in respect of it.

Position of mortgagor in possession.

A mortgagor will after 1925 retain the legal fee simple or the head term affected by the mortgage. He may, when in possession, exercise all ordinary acts of ownership. Thus, he may cut timber, unless the estate, without the timber, is a scanty security : *King* v. *Smith* (1843), 2 Hare, 239; and he may bring actions at law in his own name for the recovery of rents and profits, or to prevent or recover damages in respect of any trespass or other wrong relative to the mortgaged property, unless the cause of action arises on a lease or other contract made by him jointly with any other person : L. P. Act, 1925, s. 98 ; but he cannot under this section re-enter for breach of covenants,(*b*) for the mortgagee, whether under a charge by way of legal mortgage, or by demise, is treated as having the immediate reversion.

Statutory power enabling mortgagor in possession to grant leases, or accept surrenders.

A mortgagor in possession, where the mortgage is made after 1881, is empowered by the L. P. Act, 1925, s. 99, to make agricultural or occupation leases for any term not exceeding 21 years, or, in the case of mortgages made after 1925, 50 years, or building leases for any term not exceeding 99 years, or, in the case of mortgages made after 1925, 999 years, subject to certain conditions thereby prescribed. A lease under this power has the same effect as if the mortgagee had joined : *Wilson* v. *Queen's Club* [1891], 3 Ch. 522 ; 60 L. J. Ch. 698 ; and the mortgagor can sue on the covenants : *Turner* v. *Walsh* [1909], 2 K. B. 484 ; 78 L. J. K. B. 753. Under sub-s. 11 the mortgagor must hand over a counterpart of the lease to the mortgagee, but omission to do this does not invalidate the lease : *Public Trustee* v. *Lawrence* [1912], 1 Ch. 789 ; 81 L. J. Ch. 436. Similar powers are given to the mortgagee in possession, and after the appointment of a receiver these powers can be exercised by the mortgagee or may be delegated by writing to the receiver : s. 99 (19). These powers are subject to any variation made in writing between the mortgagor and mortgagee, whether or not contained in the mortgage deed, but such an agreement does not bind mortgagees, as respects their rights subsisting at the date of the agreement, unless they join in or adopt the agreement : *ib.* (14). By s. 100 a mortgagor or mortgagee in possession (whether by himself or his receiver) may accept surrenders of leases with a view to the grant of a lease authorised by s. 99 or by agreement, and provided that the new lease complies with the requirements of s. 99.

Powers of mortgagee and receiver

(*b*) *Matthews* v. *Usher* [1900], 2 Q. B. 535 ; 69 L. J. Q. B. 856 ; *Molyneux* v. *Richard* [1906], 1 Ch. 34, 43 ; 75 L. J. Ch. 39.

When a lease is granted under the statutory power and the rent is reserved to, and covenants are entered into with, the mortgagor as lessor, if the mortgagee afterwards takes possession, or gives notice to pay the rent to him, the right to such rent and to distrain for the same, or to sue on the covenants, will pass to him ;(*c*) the mortgagor cannot accept a surrender of a lease so granted without the consent of the mortgagee,(*d*) except under the powers conferred by L. P. Act, 1925, s. 100.

Benefit of lessee's covenants passes to mortgagee if he takes possession.

Mortgagor cannot accept surrender.

An " occupation lease " within s. 99 may include a right of sporting over other land when such right has usually been granted with the land let : *Brown* v. *Peto* [1900], 2 Q. B. 653 ; 69 L. J. Q. B. 869 ; but not other property : *King* v. *Bird* [1909], 1 K. B. 837 ; 78 L. J. K. B. 499.

Occupation lease, what it includes.

A mortgagor with an express power of leasing may not grant a lease to himself and probably not to a trustee for himself.(*e*)

Lease by mortgagor to himself.

A mortgagor may cut and remove growing crops until possession has been demanded by the mortgagee, but not after such demand.(*f*)

Mortgagor in possession may cut growing crops.

The L. P. Act, 1925, s. 96, provides that a mortgagor, as long as his right to redeem subsists, is entitled, at his own cost, and on payment of the mortgagee's costs, to inspect and make copies of documents relating to the mortgaged property in the custody or power of the mortgagee. This section only applies to mortgages made after 1881 and has effect notwithstanding any stipulation to the contrary. On a release of part of the property comprised in a mortgage, an acknowledgment of the right of the mortgagor to production of the deeds retained should be obtained from the mortgagee. A mortgagee whose mortgage is extinguished has no liability on account of the delivery of documents of title to any person not having the best right thereto, unless he has notice of a better right : s. 96 (2). It is conceived that though he may have " actual " notice under ss. 197 and 198, he will not, in practice, search before he hands over the deeds, though he may require the person seeking redemption to produce a certificate of search.

Mortgagor may inspect deeds.

Delivery of documents.

(*c*) *Municipal, &c., B. S.* v. *Smith* (1889), 22 Q. B. D. 70 ; 58 L. J. Q. B. 61.

(*d*) *Robbins* v. *Whyte* [1906], 1 K. B. 125 ; 75 L. J. K. B. 38 ; and see Small Holdings, &c., Act, 1908, s. 39 (6).

(*e*) *Boyce* v. *Edbrooke* [1903], 1 Ch. 836 ; 72 L. J. Ch. 547 ; but see *Bevan* v. *Habgood* (1860), 1 John. & H. 222 ; 30 L. J. Ch. 107.

(*f*) *Bagnall* v. *Villar* (1879), 12 Ch. D. 812 ; 48 L. J. Ch. 695 ; *Re Gordon* (1889), 61 L. T. 299.

In any case of doubt he should execute a receipt under s. 115. A prior mortgagee will be given express notice by subsequent mortgagees, having regard to s. 94. A subsequent mortgagee having registered a land charge will not be damnified by not obtaining the deeds.

Provision for capitalising interest, valid.

Since the Usury Laws Repeal Act, 1854, a provision in a mortgage of a reversion or other property for capitalising interest in arrear is valid.(*g*) A mortgagee may stipulate for a collateral advantage at the time and as a condition of the advance, provided that the right of redemption is not interfered with and the bargain is a fair and reasonable one entered into between the parties while on equal terms, without any improper pressure or unfair dealing. Thus, a stipulation that on the advance of (say) £700 the lender shall be repaid £1,000 at a future time, or that the lender may retain part of the money advanced as a bonus or commission, has been held valid.(*h*) Also a provision that the borrower, being a publican, shall during the continuance of the security take all his beer from the lenders is valid: *Biggs* v. *Hoddinott* [1898], 2 Ch. 307; 67 L. J. Ch. 541; and a mortgagee may stipulate in the mortgage for a collateral advantage to endure after redemption, provided that it is not unfair and unconscionable, or in the nature of a penalty clogging the right of redemption, or inconsistent with or repugnant to the contractual or equitable right to redeem.(*i*) The following conditions have been held void, viz.:—

Collateral advantage may be stipulated for.

Clog on right of redemption.

(1) In a mortgage of shares in a company, a condition that the mortgagor shall endeavour to secure that the mortgagee shall always thereafter be employed as broker by the company: *Bradley* v. *Carritt* [1903], A. C. 253; 72 L. J. K. B. 471.

(2) In a mortgage of a farm, a condition that the mortgagor must sell the property within twelve months, employing the mortgagee as auctioneer, or paying him the equivalent of his commission: *Browne* v. *Ryan* [1901], 2 Ir. R. 653.

(*g*) *Clarkson* v. *Henderson* (1880), 14 Ch. D. 348; 49 L. J. Ch. 289; *Wrigley* v. *Gill* [1906], 1 Ch. 165 (where the mortgagee was in possession); 75 L. J. Ch. 210; see also *Bradley* v. *Carritt* [1903], A. C. 253, 279; 72 L. J. K. B. 471; *Kreglinger* v. *N.P. Meat Co.* [1914], A. C. 25; 83 L. J. Ch. 79.

(*h*) *Potter* v. *Edwards* (1857), 26 L. J. Ch. 468; *Mainland* v. *Upjohn* (1889), 41 Ch. D. 126; 58 L. J. Ch. 361.

(*i*) *Noakes* v. *Rice* [1902], A. C. 24; 71 L. J. Ch. 139; and see *Morgan* v. *Jeffreys* [1910], 1 Ch. 620; 79 L. J. Ch. 360; and see cases collected in *De Beers, &c.* v. *British S. Africa Co.* [1912], A. C. 52; 81 L. J. Ch. 137; and *Fairclough* v. *Swan Brewery Co.*, 81 L. J. P. C. 207; *Kreglinger* v. *New Patagonia Meat Co.* [1914], A. C. 25; 83 L. J. Ch. 79; see also *Re Cuban Land Co.* [1921], 2 Ch. 147; 90 L. J. Ch. 440.

(3) In a mortgage of debenture stock of a company, a condition giving the mortgagee the option to purchase the stock at 40 per cent. of the face value within twelve months;(*j*) but when the option to purchase is an entirely separate transaction from the mortgage there is no clog.(*k*)

Condition unduly restricting rights of ownership.

Any condition which unduly fetters the mortgagor from dealing with his own property, other than the property charged by the mortgage, will be void.(*l*)

SECT. IV.—*The rights and powers of a mortgagee as regards sale, action on the covenant, and the appointment of a receiver.*

Power of sale.

The rights and powers of a mortgagee as regards sale and the appointment of a receiver are given in L. P. Act, 1925, ss. 101-110.

Under s. 101 a mortgagee is given a power to sell the mortgaged land, while ss. 88 and 89 enable the fee simple or the head term (with one exception) to be conveyed. The power of sale is regulated by s. 103, while s. 104 prescribes the effect of the conveyance but must be read with s. 88 in regard to freeholds and s. 89 in regard to leaseholds.

Loss of mortgage term, &c.

If a mortgagee is paid off and the mortgage term (if any) ceases under s. 116, or the legal charge is discharged, still, if no receipt under s. 115 or surrender is executed and the deeds are left with the mortgagee, that enables him to make a good title to a purchaser under s. 104, provided that the purchaser has no notice of the fraud.

Mortgage of undivided shares in land.

A person who before 1926 became a mortgagee of an undivided share in land, and any person claiming under him, may sell the corresponding share in the proceeds of sale of the land, and the income of the land until sale; he also has a right to require the trustees for sale to account for the income attributable to that share, or to appoint a receiver, corresponding to the right which, before 1926, he would have had to take possession or appoint a receiver: s. 102.

Restriction on power of sale arising through bankruptcy of mortgagor.

Where a mortgage is executed after 1925 and a right of sale arises solely by reason of an act of, or adjudication in, bankruptcy of the mortgagor, the power of sale may not be exercised without the leave of the court: s. 110; but a purchaser is not concerned to see that such leave has been obtained: s. 104 (2) (*c*).

(*j*) *Samuel* v. *Jarrah, &c., Corpn.* [1904], A. C. 323; 73 L. J. Ch. 526.

(*k*) *Reeve* v. *Lisle* [1902], A. C. 461; 71 L. J. Ch. 768; and see *De Beers Consolidated Mines* v. *B. S. A. Co.* [1912], A. C. 52; 81 L. J. Ch. 137.

(*l*) *Horwood* v. *Millar's Co.* [1917], 1 K. B. 305; 86 L. J. K. B 190.

Equitable mortgage.

The Act does not enable an equitable mortgagee to convey the legal estate,(*m*) but under s. 90 the court can in effect convert an equitable mortgage into a legal mortgage.

Notice.

The three months' default in payment mentioned in s. 103 runs from the service of the notice, not from the date fixed by the notice for payment.(*n*)

Contract to sell before expiration of notice.

A contract for sale entered into by a mortgagee after giving the notice required by the power, but before the expiration of the period within which the money must be paid in accordance with the notice, is rendered valid by the subsequent expiration of that period without payment.(*o*)

Purchaser not protected if aware of irregularity.

Under s. 104 (2) a conveyance made in exercise of the power is not impeachable on the ground of irregularity; a sale by a mortgagee will be valid as regards the purchaser, though it may turn out that the power of sale was improperly exercised, but the purchaser must not be stamped with fraud: *Bailey* v. *Barnes* [1894], 1 Ch. 25; 63 L. J. Ch. 73. Thus if facts are actually brought to the purchaser's knowledge showing that the sale is improper, he could not safely complete.(*p*) After 1925, a sale by a mortgagee will be deemed to be made under the statutory power: s. 104 (3).

Notices before sale should be given to a subsequent mortgagee.

If a mortgagor has created a second mortgage, the notice required by s. 103 must be given to the second mortgagee as well as to the mortgagor, the term "mortgagor" in the Act being defined (s. 205 (xvi)) as including persons deriving title under the original mortgagor. If a mortgagee fails to give such notice, he will be liable in damages for such default: *Hoole* v. *Smith*, 17 Ch. D. 434; 50 L. J. Ch. 576.

Mortgagee liable for loss owing to a mistake in particulars.

A mortgagee is bound in conducting the sale to behave as a reasonable person would behave in the sale of his own property: *McHugh* v. *Union Bank of Canada* [1913], 82 L. J. P. C. 65; and is liable to the mortgagor and to subsequent mortgagees for a loss arising by reason of a mistake in the particulars of sale prepared by his auctioneer: *Tomlin* v. *Luce* (1889), 43 Ch. D. 191; 59 L. J. Ch. 164. He is not, however,

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(*m*) *Re Hodson and Howe* (1887), 35 Ch. D. 668; 56 L. J. Ch. 755; and *cf. Re Solomon and Meagher* (1889), 40 Ch. D. 508; 58 L. J. Ch. 339, where the sale was made under Lord Cranworth's Act.

(*n*) *Barker* v. *Illingworth* [1908], 2 Ch. 20; 77 L. J. Ch. 581; as to notices: L. P. Act, 1925, s. 196.

(*o*) *Major* v. *Ward* (1847), 5 Hare, 598; *Farrar* v. *Farrars, Ltd.* (1888), 40 Ch. D. 395, 412; 58 L. J. Ch. 185.

(*p*) See *Selwyn* v. *Garfit* (1888), 38 Ch. D. 273; 57 L. J. Ch. 609.

liable for any involuntary loss arising under the exercise of any power, whether statutory or express : s. 106 (3). Involuntary losses.

The court will not interfere, as against a purchaser in good faith from a mortgagee, though the price is very inadequate, unless it is so low as to be evidence of fraud.(*q*) Sale at inadequate price valid.

A second mortgagee may purchase from a first mortgagee selling under his power of sale ;(*r*) but a mortgagor purchasing under a power of sale in right of a first mortgage acquires no priority against his own second mortgagee : *Otter* v. *Vaux* (1856), 2 K. & J. 650 ; 26 L. J. Ch. 128. A first mortgagee cannot appropriate the surplus proceeds, after the satisfaction of his claim, for the benefit of the mortgagor or of a third mortgagee, until the claims of the second mortgagee, both as to capital and interest, have been fully satisfied.(*s*) Under the usual power of sale, a mortgagee may sell subject to a stipulation that a part of the purchase-money may remain on mortgage ;(*t*) and tenants for life, statutory owners, and trustees for sale may now sell subject to this stipulation : T. Act, 1925, s. 10 (2). How power of sale may be exercised.

Under L. P. Act, 1925, s. 101 (2) : *cf. Born* v. *Turner* [1900], 2 Ch. 211 ; 69 L. J. Ch. 593, the mortgagee may enter into or obtain restrictive covenants as to user, may sell with or without a grant or reservation of easements or of minerals and mining rights, may sell the mines and minerals apart from the surface, and may require a purchaser to give covenants to expend money on the land. Thus, as in the case of a tenant for life, a mortgagee, where the mortgage deed is dated after 1911, or the statutory powers have been extended to the mortgage, may sell land under a building scheme, and thus obtain a better price. Extension of power of sale.

A mortgagee may sell in good faith to a solicitor who acted for him on the mortgage, but not on the sale.(*u*) May sell to his solicitor.

On the bankruptcy of the mortgagor, the mortgagee, whether legal or equitable, is a " secured creditor " within the Bankruptcy Act, 1914, and as such may—(1) realise his security and prove for the balance ; (2) surrender his security to the trustee and Position of mortgagee on mortgagor's bankruptcy.

(*q*) *Warner* v. *Jacob* (1882), 20 Ch. D. 220 ; 51 L. J. Ch. 642 ; *Haddington, &c , Co.* v. *Huson* [1911], A. C. 722 ; 81 L. J. P. C. 94 ; *Belton* v. *Bass* [1922], 2 Ch. 449 ; 91 L. J. Ch. 216.

(*r*) *Kirkwood* v. *Thompson* (1865), 2 De G. J. & S. 613 ; 34 L. J. Ch. 501.

(*s*) *Re Thomson's Mortgage* [1920], 1 Ch. 508 ; 89 L. J. Ch. 213.

(*t*) *Thurlow* v. *Mackeson* (1868), L. R. 4 Q. B. 97 ; 38 L. J. Q. B. 57.

(*u*) *Nutt* v. *Easton* [1899], 1 Ch. 873 ; 68 L. J. Ch. 367 ; aff. on another ground [1900], 1 Ch. 29 ; 69 L. J. Ch. 46.

prove for his whole debt ; or (3) assess the value of his security in his proof. If he values his security the trustee may redeem at such value or may require that the security be sold.(*v*) A mortgagee of land may also apply to the court in bankruptcy, and obtain an order for a sale. But where a right to sell or appoint a receiver arises solely because of the mortgagor's bankruptcy the right cannot be exercised without leave of the High Court : L. P. Act, 1925, s. 110 ; otherwise the mortgagee must wait till the power becomes exercisable under s. 103. The court in bankruptcy will enquire whether the applicant is a mortgagee, and, if so, will take an account of what is due to him for principal, interest, and costs. A sale will then be directed, and the proceeds will be applied, first, in paying the costs, charges, and expenses of the trustee ; secondly, in payment of the principal, interest, and costs due on the mortgage ; and the surplus (if any) will be paid to the trustee. The conduct of the sale is in the discretion of the court, and will, as a general rule, be given to the trustee, unless the security is insufficient, in which case it will probably be given to the mortgagee : *Re Jordan* (1884), 13 Q. B. D. 228 ; 53 L. J. Q. B. 554. If the proceeds are insufficient to pay the debt, the mortgagee may prove for the deficiency. It is not usually necessary, nor is it imperative, for the mortgagee to apply in bankruptcy for the above order ; he may, if he prefers it, proceed in the Chancery Division for foreclosure (see now L. P. Act, 1925, ss. 88 (2), 89 (2), for the effect of a foreclosure order), or exercise his power of sale, or pursue any other of his ordinary remedies. A secured creditor is not bound to receive payment of his debt from his debtor after notice of an act of bankruptcy, as he cannot safely hand over the securities to him.(*w*)

Effect of bankruptcy of mortgagor of expectant personalty.

Where the mortgagor of an expectant share of personalty becomes bankrupt before the share falls in, his discharge will not affect the mortgage, even though the mortgagee did not prove in his bankruptcy : *Re Lind* [1915], 2 Ch. 345 ; 84 L. J. Ch. 884.

Mortgagee may pursue all his remedies simultaneously.

A mortgagee cannot be interfered with, in the exercise of any of his powers, except on the payment into court of the full

(*v*) As to the right of the secured creditor to re-value his security, see *Re Fanshawe* [1905], 1 K. B. 170 ; 74 L. J. K. B. 153.

(*w*) *Ponsford & Co.* v. *Union of London, &c., Bank* [1906], 2 Ch. 444 ; 75 L. J. Ch. 724.

amount claimed by him for principal, interest, and costs.(*x*) He may pursue all his remedies at one and the same time, or separately, as he thinks fit. If, pending a foreclosure action, he sues on the covenant, and obtains full payment, the mortgagor is, by the fact of payment, entitled to a discharge, and foreclosure is prevented. If a part only of the debt is recovered in the action, the mortgagee may foreclose for non-payment of the remainder. If, on the other hand, he obtains foreclosure first, and finds that the value of the property is not sufficient to cover his debt, he is not precluded from suing on the covenant, so long as the mortgaged property remains in his power, but by so doing he gives to the mortgagor a renewed right to redeem, or in other words it opens the foreclosure. If, however, the mortgagee, after he has foreclosed, sells the mortgaged property, and thus prevents himself from restoring it, the court will by injunction restrain him from afterwards suing on the covenant ;(*y*) this does not apply to a sale by a mortgagee who has not foreclosed : *Rudge* v. *Richens* (1873), 8 C. P. 358 ; 42 L. J. C. P. 127.

Opening the foreclosure.

Under the usual separate covenant to pay interest after the day appointed for payment of principal, arrears of interest may be recovered without calling in the principal. But if the separate covenant is omitted, interest, after the day of default, is recoverable only as damages, and is limited to 5 per cent., or if a less rate is named by the parties as payable up to the day of default, to that rate : *Re Roberts* (1880), 14 Ch. D. 49.

Advantage of separate covenant to pay interest.

If the mortgagee brings an action on the covenant to pay principal and interest and obtains judgment, the personal remedy under the covenant merges in the judgment, which bears interest at 4 per cent. ;(*z*) but this rule does not prevent the mortgagee from holding his security until he has received payment of principal and interest at the agreed, though higher rate, if there is a separate covenant to pay interest.(*a*)

Effect of judgment as regards interest.

A tenant when paying rent to a mortgagee may deduct any sum which he has paid in respect of income tax: Income Tax Act, 1918, Sch. A, VII, 13. This sum may also be deducted by a mortgagor from the mortgage interest : Income Tax Act, 1918,

Deduction from payments in respect of income tax.

(*x*) *Paynter* v. *Carew* (1854), Kay, App. xxxvi; 23 L. J. Ch. 596.

(*y*) *Lockhart* v. *Hardy* (1846), 9 Beav. 349 ; 15 L. J. Ch. 347 ; *Palmer* v. *Hendrie* (1859), 27 Beav. 349 ; *Kinnaird* v. *Trollope* (1888), 39 Ch. D. 636, 642 ; 57 L. J. Ch. 905.

(*z*) Judgments Act, 1838, s. 17 ; *Ex p. Fewings* (1883), 25 Ch. D. 338 ; 53 L. J. Ch. 545.

(*a*) *Economic, &c., Soc.* v. *Usborne* [1902], A. C. 147; 71 L. J. P. C. 34.

General Rule No. 19. A covenant prohibiting the deduction of income tax from such payments is void: Income Tax Act, 1918, General Rule No. 23, but an agreement to pay a fixed rate after deduction in respect of income tax is valid.(*b*)

Receivers.

The L. P. Act, 1925, s. 101 (1) (iii), authorises a mortgagee to appoint a receiver of the income of the property or of any part thereof when the mortgage money has become due. Section 109 defines the receiver's powers, &c.(*c*) And see s. 99 (19) as to the effect on the leasing powers of appointing a receiver.

Agent of mortgagor.

The receiver is the agent of the mortgagor where appointed under the statutory power: s. 109 ;(*d*) but ceases to be so if he is afterwards appointed receiver by the court(*e*), or if he is the receiver of a company which is wound up by the court.(*f*)

Priority and liability of receivers.

A receiver appointed by the court on the application of a second mortgagee has priority over one appointed by a first mortgagee under his statutory power, and the first mortgagee is not entitled to any of the rents and profits until he has obtained the appointment of a receiver by the court: *Re Metropolitan Estates* [1912], 2 Ch. 497; 81 L. J. Ch. 475. A receiver appointed by a mortgagee under his statutory powers commits a breach of duty if he pays arrears of interest on the mortgage which are statute barred, and a mortgagee to whom such rents are paid cannot legally appropriate them to the payment of such arrears: *Hibernian Bank* v. *Yourell* (No. 2) [1919], 1 Ir. R. 310.

Distress by mortgagor.

If a receiver has been appointed the mortgagor must obtain his authority to distrain: *Woolston* v. *Ross* [1900], 1 Ch. 788; 69 L. J. Ch. 363.

Repairs.

A receiver if so directed in writing by the mortgagee can pay the cost of insurance and executing necessary repairs: s. 109. As to repairs, see *White* v. *Metcalf*, *supra*.

(*b*) *Brooke* v. *Price* [1917], A. C. 115; 86 L. J. Ch. 329; see also Konstam on Inc. Tax, 3rd ed., 60-63, 201.

(*c*) See also *White* v. *Metcalf* [1903], 2 Ch. 567; 72 L. J. Ch. 712; *Hibernian Bank* v. *Yourell* [1919], 1 Ir. R. 310.

(*d*) *cf. Re Vimbos* [1900], 1 Ch. 470; 69 L. J. Ch. 209; *Robinson Printing Co.* v. *Chic* [1905], 2 Ch. 123; 74 L. J. Ch. 399; *Deyes* v. *Wood* [1911], 1 K. B. 806; 80 L. J. K. B. 553; as to receiver's liability as agent: *Re Levi & Co.* [1919], 1 Ch., at 422, 423; 88 L. J. Ch. 233.

(*e*) *Hand* v. *Blow* [1901], 2 Ch. 721; 70 L. J. Ch. 687; as to power for the court to confirm a licence, granted by a receiver, to work peat on the mortgaged land: *Stamford* v. *Keeble* [1913], 2 Ch. 96; 82 L. J. Ch. 388.

(*f*) *Gosling* v. *Gaskell* [1897], A. C. 575; 66 L. J. Q. B. 848; and see *Re Henry Pound, &c.* (1889), 42 Ch. D. 402; 58 L. J. Ch. 792; *British Linen Co.* v. *S. American, &c., Co.* [1894], 1 Ch. 108; 63 L. J. Ch. 169.

Interest. A receiver must pay arrears of interest accruing as well before as after his appointment: s. 109: *National Bank* v. *Kenney* [1898], 1 Ir. R. 197.

Principal. Under L. P. Act, 1925, s. 109 (8) (v), a receiver can after 1925 pay the balance towards discharge of the principal money if so directed by the mortgagee.

Commission. A receiver can retain commission not exceeding £5 per cent: s. 109 (6).

Sureties for receiver appointed the court. Sureties for receivers appointed by the court are liable in respect of all money which the receiver ought to have paid into court: *Re Graham* [1895], 1 Ch. 66; 64 L. J. Ch. 98.

Sect. V.—*The powers, duties, and liabilities of a mortgagee in possession.*

Mortgagee in possession must account to mortgagor. A legal mortgagee may, at any time after the execution of the mortgage, enter into possession of the mortgaged property and receive the rents towards payment of his debt unless the deed otherwise provides.(*g*) If possession is taken with a view to realising the security, as opposed to maintaining it, the conduct of the mortgagee operates as a request for payment and entitles the mortgagor to redeem at once,(*h*) hence the mortgagee should exercise this right only in the case of emergency. He will have to account to the mortgagor for the rents so received, and he will be responsible for gross and wilful negligence or injury, such as pulling down buildings, &c., but he will be allowed costs for necessary repairs: *Sandon* v. *Hooper* (1843), 6 Beav. 246; 12 L. J. Ch. 309. In order to entitle him to the cost of permanent improvements, he must make out a case for them in the action: *Henderson* v. *Astwood* [1894], A. C. 150. He may take possession of part of the mortgaged property, leaving the rest in the possession of the mortgagor: *Simmins* v. *Shirley* (1877), 6 Ch. 173; 46 L. J. Ch. 875.

Meaning of "legal mortgagee." After 1925, "legal mortgagee" as respects land, means either a mortgagee by demise or sub-demise or (L. P. Act, 1925, s. 87) a chargee by way of legal mortgage (*ib.*, s. 205 (1) (xvi)); it is assumed that the mortgage or charge was made by an estate

(*g*) Fisher, 6th ed., 446; Coote, 8th ed., 827. As to the rights of second mortgagees to take possession, see 24 L. Q. R. 297. As to meaning of possession, see *Kirby* v. *Cowderoy* [1912], A. C. 599; 81 L. J. P. C. 222.

(*h*) *Bovill* v. *Endle* [1896], 1 Ch. 648; 65 L. J. Ch. 542; *Ex p. Wickens* [1898], 1 Q. B. 543; 67 L. J. Q. B. 397; and *Ex p. Ellis* [1898], 2 Q. B. 79; 67 L. J. Q. B. 734; where the intention of the mortgagee was considered.

owner, or under a power reserved by that Act (*ib.*, ss. 7 and 8) capable of operating at law. The right to take possession is expressly conferred on a legal chargee by s. 87.

Conveyances pass "possession."

The fact that conveyances (*ib.*, s. 51) operate to transfer the possession without actual entry does not convert a mortgagee into a "mortgagee in possesssion" unless he actually takes possession or requires the rents to be paid to him, any more than a mortgage made by way of appointment under the Statute of Uses, though it passed the "possession," put the mortgagee into possession for the purpose of accounting.

Taking possession, effect on mortgagor's estate.

If a mortgagee takes possession that does not convert the legal fee simple of the mortgagor into an equitable interest though, for some purposes, the mortgagor's estate is no longer a fee simple in possession: L. P. Act, 1925, s. 95.

When receipt of rent constitutes taking possession.

In order to constitute a mortgagee in possession he must receive the rents from the tenant in such a way as to be in effect a displacing of the mortgagor in the management and control of the property. If the mortgagor's agent receives the rents from the tenant and then hands over the whole to the mortgagee, the latter does not thereby become mortgagee in possession.(*i*)

Mortgagee bound to deal with property as a prudent owner.

A mortgagee in possession is bound to deal with the property in the same way as a prudent man would deal with his own; he ought not to engage in, and will not be allowed for, adventures and speculations: *Hughes* v. *Williams* (1806), 12 Ves. 493. Thus, he must not open mines,(*j*) unless the security is insufficient: *Millett* v. *Davey* (1862), 31 Beav. 470; 32 L. J. Ch. 122; and if he comes into possession of mines already open, he should advance no more in the management of them than a cautious owner would spend: *Rowe* v. *Wood* (1822), 2 J. & W. 553.

May grant leases, accept surrenders, and cut and sell timber.

A mortgagee in possession, where the mortgage has been made after 1881, has the same powers of granting leases as a mortgagor in possession: L. P. Act, 1925, s. 99. If the mortgage is made after 1911, a mortgagee who has appointed a receiver or is in possession has also the powers of accepting surrenders of leases conferred by L. P. Act, 1925, s. 100. He may delegate these powers to the receiver: *ib.*, ss. 99 (19), 100 (13). The fact that the leasing powers and powers to accept surrenders will take

(*i*) *Noyes* v. *Pollock* (1886), 32 Ch. D. 53; 55 L. J. Ch. 513; and see *Chapman* v. *Smith* [1907], 2 Ch. 97; 76 L. J. Ch. 394.

(*j*) *Thorneycroft* v. *Crockett* (1848), 16 Sim. 445; *Hood* v. *Easton* (1856), 2 Giff. 692.

effect from the time of appointing a receiver will, in many cases, render it unnecessary for the mortgagee to take possession. A mortgagee in possession may also cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, and may contract for any such cutting and sale to be completed within any time not exceeding twelve months from the making of the contract: *ib.*, s. 101 (1) (iv).

How account to be taken.

If the net rents received by the mortgagee are more than sufficient to keep down the interest on his debt, the surplus must be applied towards payment of the principal. A question often arises in what manner the account is to be taken as to such surplus rent, *i.e.*, whether annual rests are to be made, and the principal to be reduced in each year by the amount of the surplus rents, or whether the interest should be allowed to run on until the whole debt is discharged. It seems to be now settled that an account with annual rests will not be directed, unless, at the time when the mortgagee entered into possession, no interest was in arrear, as a mortgagee is not bound to receive his money in driblets. If he enters into possession when no interest is due, he shows his intention to receive payment of the debt in driblets, hence the account goes with rests; but if the interest is in arrear, the fact of his taking possession affords no evidence of such an intention, for he is driven to take possession by the non-payment of the interest, hence the account goes on till the whole debt is satisfied: see *Nelson* v. *Booth* (1858), 3 De G. & J., at p. 122; 27 L. J. Ch. 782. But a mortgagee of leaseholds may take possession when there is no arrear of interest, under circumstances which may not render him liable to account with annual rests, for instance, if he enters in order to prevent a forfeiture for non-payment of ground rent or non-insurance: *Patch* v. *Wild* (1861), 30 Beav. 99. If the mortgage contains a provision for capitalising interest in arrear the account will be taken continuously in the usual way and the mortgagee will only be entitled to simple interest, unless he can make out in any half-year the existence of facts which entitle him to compound interest: *Wrigley* v. *Gill* [1906], 1 Ch. 165, 179; 75 L. J. Ch. 210.

Annual rests, when necessary.

Leaseholds.

When mortgagee in possession sells part.

But if a mortgagee in possession sells a part of the mortgaged property under his power of sale, he must apply the proceeds first in payment of interest and costs, and then either pay the balance to the mortgagor, or apply it in reduction of principal. In taking an account against a mortgagee who has retained sale money beyond the interest and costs due,

a rest must be made at the time of the receipt of the proceeds of sale, even though he may have entered into possession when interest was in arrear: *Thompson* v. *Hudson* (1870), L. R. 10 Eq. 497; 40 L. J. Ch. 28. This rule does not entitle the mortgagor to have rests made in the account of rents and profits: *Ainsworth* v. *Wilding* [1905], 1 Ch. 435; 74 L. J. Ch. 256.

When interest is in arrear.

Interest is not in arrear so long as the mortgagee in possession has rents and profits in his hands exceeding the amount of such interest, but this does not prevent the mortgagee claiming interest at the higher rate in default of punctual payment: *Wrigley* v. *Gill* [1906], 1 Ch. 165; 75 L. J. Ch. 210.

Sect. VI.—*Mortgages from a client to his solicitor.*

Duty of solicitor.

A solicitor taking a mortgage from his client is bound to give him the same advice about the transaction as if the client were borrowing from a third party; there is no reason why this should not apply where the solicitor is also acting as trustee. He must not insert in the mortgage deed any unusual provision, *e.g.*, a clause dispensing with notice on an exercise of the power of sale, unless there are special circumstances which would render such a clause a proper one.(*k*)

Must not insert unusual condition in mortgage.

Terms on which proceedings by solicitor-mortgagee will be stayed.

The rule that proceedings by a mortgagee to enforce his security cannot be stayed, except on payment into court of the full amount claimed for principal, interest, and costs, does not apply where the mortgagee is the solicitor of the mortgagor. In such a case the court will look into all the circumstances, and will make such order as will save the client from oppression without injuring the solicitor's security: *Macleod* v. *Jones* (1883), 24 Ch. D. 289; 53 L. J. Ch. 145.

Law that solicitor-mortgagee could not charge profit costs altered by Act of 1895.

It was formerly the law that a solicitor preparing a mortgage, or a transfer of a mortgage, to himself, could not charge the mortgagor for its preparation, and if he acted for himself in an action in defence of his title, or in a foreclosure or redemption action, or in selling under the power of sale, he could not recover profit costs.(*l*) It is now provided by the Mortgagee's Legal Costs Act, 1895, see also *Cheese* v. *Keen* [1908], 1 Ch. 245; 77 L. J. Ch. 163, that a solicitor-mortgagee may charge for business before

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(*k*) *Cockburn* v. *Edwards* (1881), 18 Ch. D. 449; 51 L. J. Ch. 46; *Pooley's Trustee* v. *Whetham* (1886), 33 Ch. D. 111; 55 L. J. Ch. 899.

(*l*) *Eyre* v. *Wynn-Mackenzie* [1894], 1 Ch. 218; 63 L. J. Ch. 239. See also S. C., 1896, 1 Ch. 135; 65 L. J. Ch. 194.

the mortgage when the mortgage is dated after the Act, and for subsequent business when the mortgage is dated before or after the Act.(*m*)

The above Act does not apply to professional persons other than solicitors. Hence an auctioneer who is a mortgagee is still unable to charge for professional costs on a sale by him: *Matthison* v. *Clarke* (1854), 3 Drew. 3; 24 L. J. Ch. 202.

Act applies to solicitors only.

Auctioneer mortgagee.

Sect. VII.—*The effect of the Limitation Acts as between mortgagor and mortgagee.*

The R. P. Lim. Act, 1874, s. 8, provides that:—

No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for a release of the same, unless in the meantime some part of the principal money, or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment or the last of such payments or acknowledgments if more than one was given.(*n*)

Mortgagee barred of remedy at end of twelve years after date when mortgage debt due or last payment of principal or interest or acknowledgment.

The above enactment applies not only to an action by a mortgagee to recover possession of the land or for foreclosure, but also to the personal remedy on the covenant (if any) in the mortgage deed,(*o*) or on a collateral bond or covenant.(*p*) It also applies to a mortgagee's interest in the proceeds of sale of land held upon trust for sale.(*q*)

Act applies to personal remedies as well as those against the land.

Where a mortgagee of freeholds acquires a title under the Limitation Acts after 1925 he can enlarge his mortgage term into the fee simple discharged from any legal mortgage affected by the title acquired, or being a legal chargee can by deed vest the fee simple in himself: L. P. Act, 1925, s. 88 (3), and see Vol. I. Similarly, a mortgagee of leaseholds, who has acquired such a title, can by deed vest the head term affected by his mortgage in himself,

Effect of Limitation Acts after 1925.

(*m*) This entitles a solicitor to charge a negotiation fee for a loan made by himself: *Re Norris* [1902], 1 Ch. 741; 71 L. J. Ch. 187.

Negotiation fee.

(*n*) This section is a re-enactment of the provisions in the R. P. Lim. Act, 1833, s. 40, substituting twelve for twenty years.

(*o*) *Sutton* v. *S.* (1882), 22 Ch. D. 511; 52 L. J. Ch. 333; *Kirkland* v. *Peatfield* [1903], 1 K. B. 756; 72 L. J. K. B. 355.

(*p*) *Fearnside* v. *Flint* (1883), 22 Ch. D. 579; 52 L. J. Ch. 479; see *Re Powers* (1885), 30 Ch. D. 291; for other cases, see Coote, 8th ed., 1003 *et seq.*; *Read* v. *Price* [1909], 2 K. B. 724; 78 L. J. K. B. 1137.

(*q*) *Re Fox* [1913], 2 Ch. 75; 82 L. J. Ch 393; *Re Witham* [1922], 2 Ch. 413; 92 L. J. Ch. 22.

without any licence to assign and thereupon his mortgage term, if any, with any other mortgages affected by the title acquired under the Limitation Acts, will then be extinguished: *ib.*, s. 89 (3), and see Vol. I. When a person can acquire or convey the head term, he must do so when required by a purchaser: *ib.*, s. 42.

From what period time runs, where no payment or acknowledgment.

If there has been no payment of principal money or interest under the deed, and no acknowledgment, the twelve years will run in the case of an ordinary mortgage, which usually makes the principal payable six months after date, from the day fixed for redemption.

Where a mortgage is repayable on demand time runs from the execution of the mortgage, whether or not the land charged is subject to a lease. As a mortgagee, by bringing a foreclosure action, will not obtain any immediate pecuniary benefit, this does not prevent time from running.(*r*)

Effect of foreclosure.

If a mortgagee obtains an order for foreclosure within the twelve years, he may bring an ejectment action to recover possession of the land at any time within twelve years from the date of the foreclosure order, as such an order vests the beneficial ownership in him for the first time: *Pugh* v. *Heath* (1882), 7 A. C. 235; 51 L. J. Q. B. 367.

Effect of foreclosure after 1925.

In the case of legal mortgages of freeholds an order made after 1925 will vest the fee simple in the mortgagee subject to any paramount mortgage: L. P. Act, 1925, s. 88 (2). In the case of legal mortgages of leaseholds the order will generally vest the leasehold reversion affected by the mortgage in the mortgagee, subject to any paramount mortgage; subsequent mortgages will be extinguished: *ib.*, s. 89 (2). As to equitable mortgages: *ib.*, s. 90; and as to vesting orders: T. Act, 1925, ss. 44 (vii), 46, 47-49, 57.

By whom payment must be made in order to keep debt alive.

Payment of interest by a person who as between himself and the mortgagor is bound to pay, though he is under no contract with the mortgagee to do so, is sufficient to prevent the statute from running: *Bradshaw* v. *Widdrington* [1902], 2 Ch. 430; 71 L. J. Ch. 627. But a payment of rent by a tenant of the mortgaged property to the mortgagee in consequence of a notice from the latter is not payment of interest by a person bound to pay, and is therefore insufficient.(*s*)

(*r*) *Wakefield and Barnsley Bank* v. *Yates* [1916], 1 Ch. 452; 85 L. J. Ch. 360.

(*s*) *Harlock* v. *Ashberry* (1882), 19 Ch. D. 539; 51 L. J. Ch. 394; see also *Re Clifden* [1900], 1 Ch. 774 69 L. J. Ch. 478.

Payment of interest by tenant for life.

Payment of interest by a tenant for life of real estate charged with the debt keeps it alive against persons entitled in remainder;(*t*) if the tenant for life of the real estate is also entitled for life to the interest of the debt, he will be deemed for this purpose to have paid the interest to himself.(*u*) But if two estates are charged with a debt in equal moieties, payment of interest by the owner of one estate does not keep the debt alive against the owner of the other: *Dickenson* v. *Teasdale* (1862), 1 De G. J. & S. at p. 57; 32 L. J. Ch. 37.

By owner of estate charged with moiety of debt.

By mortgagor after sale of part of property.

If the reversion in part of the mortgaged property is conveyed by the mortgagor to a purchaser for value, and after the sale the mortgagor or his agent continues to pay the interest on the whole debt, such payment keeps the debt alive against the sold as well as the unsold land: *Chinnery* v. *Evans* (1864), 11 H. L. C. 115. So, also, payment of interest by the assignee or tenant for life of the reversion on a mortgage keeps the debt alive against the original mortgagor and his personal representative: *Dibb* v. *Walker* [1893], 2 Ch. 429; 62 L. J. Ch. 536. And on the same principle, if a mortgagor devises the reversion on a mortgage, payment of interest by the devisee would prevent the statute from running in favour of the testator's personal estate, but if the devisee is himself the person entitled to the interest, and therefore pays none, payment will not be presumed on the ground of a supposed duty on his part to make it.(*v*) After 1925 a devisee will only take an equitable interest till the executors in writing assent to the property passing to the devisee, the assent will generally relate back to the death, it can be made subject to a legal mortgage. The executors should make the necessary arrangements for the manner in which the debt is to be borne before assenting. The principle of the Real Estate Charges Acts (now repealed) has been applied to all property which in the case of deaths after 1925 will be primarily liable to discharge the incumbrances affecting it, unless the testator otherwise provides.

By assignee or devisee of right of redemption.

Executors distributing residuary estate while mortgage debt unpaid.

If persons who are executors and devisees in trust of the real estate distribute the personal estate without providing for a

(*t*) *Roddam* v. *Morley* (1857), 1 De G. & J. 1; 26 L. J. Ch. 438; *Pears* v. *Laing* (1871), L. R. 12 Eq. 41; 40 L. J. Ch. 225; *Re Chant* [1905], 2 Ch. 225; 74 L. J. Ch. 542.

(*u*) *Topham* v. *Booth* (1887), 35 Ch. D. 607; 56 L. J. Ch. 812; see *Re Allen* [1898], 2 Ch. 499; 67 L. J. Ch. 614.

(*v*) *Re England* [1895], 2 Ch. 820; 65 L. J. Ch. 21; *Re Lacey* [1907], 1 Ch. 330; 76 L. J. Ch. 316.

mortgage debt, and the mortgaged land afterwards proves an insufficient security, they cannot treat the distribution as a *devastavit*, entitling them to claim the benefit of the Limitation Acts at the end of six years.(*w*)

The R. P. Lim. Act, 1833, s. 42, provides that :—

Only six years arrears of interest recoverable.

> No arrears . . . of interest in respect of any sum of money charged upon . . . land . . . shall be recovered by any . . . action or suit but within six years next after the same shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent; PROVIDED NEVERTHELESS that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the rents and profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or incumbrance on the same land the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although the time may have exceeded the said term of six years: See Carson, 2nd ed., 198 *et seq.*

Enactment applies whenever legal proceeding by mortgagee is necessary.

This section applies to a foreclosure action or any other legal proceeding taken by the mortgagee against the land or the proceeds of the land, *e.g.*, to an application by him for payment out of court of purchase-money paid into court under the L. Clauses Act, 1845.(*x*)

It does not apply to sale by mortgagee under power, nor to redemption action by mortgagor.

But s. 42 does not apply where a mortgagee has sold under his power of sale, and has in his hands the proceeds of the sale, so as to preclude him from retaining more than six years' arrears in the event of an action brought against him by the mortgagor for the surplus proceeds : *Re Marshfield* (1887), 34 Ch. D. 721 ; 56 L. J. Ch. 599. Nor does it apply to an action by the mortgagor for redemption : *Dingle* v. *Coppen* [1899], 1 Ch. 726 ; 68 L.J. Ch. 337 ; or to any proceeding by the mortgagor to obtain payment of his debt out of money in court representing the proceeds of the mortgaged land.(*y*)

Arrears of interest recoverable by action on covenant in mortgage deed.

By the Civil Procedure Act, 1833, s. 3, twenty years was fixed as the period within which actions of covenant might be brought, and it was held that this enactment must be taken as partially repealing, or engrafting an exception on, s. 42 of the R. P. Lim. Act, 1833, and that the joint effect of the two Acts was that, as

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(*w*) *Re Hyatt* (1888), 38 Ch. D. 609 ; 57 L. J. Ch. 777 ; and see *Re Moon* [1907], 2 Ch. 304 ; 76 L. J. Ch. 535.

(*x*) *Re Stead's Mortgaged Estates* (1876), 2 Ch. D. 713 ; 45 L. J. Ch. 634.

(*y*) *Re Lloyd* [1903], 1 Ch. 385 ; 72 L. J. Ch. 78 ; but see *Re Hazeldine* [1908], 1 Ch. 35 ; 77 L. J. Ch. 97 ; *Re Fox* [1913], 2 Ch. 75 ; 82 L. J. Ch. 393, where the title of the mortgagees was extinguished.

regards money secured by mortgage of land, six years' arrears of interest only could be recovered against the land, but that if the mortgage deed contained, or was accompanied by, a covenant or bond to pay principal and interest, twenty years' arrears might be recovered by an action on the covenant or bond.(*z*) This principle does not apply where an annuity is charged on real and personal estate ; there only six years' arrears can be recovered : *Re Turner* [1917], 1 Ch. 422 ; 86 L. J. Ch. 290.

Time runs against mortgagee of reversion during prior estate.

The proviso at the end of s. 42 of the R. P. Lim. Act, 1833, does not prevent the six years from running against the mortgagee of a reversionary interest during the continuance of the prior estate.(*a*)

Express trust does not exclude statute.

Since the Act of 1874 a mortgagee gains no advantage, as regards the period within which he must pursue his remedies, by the existence of an express trust for securing the money : s. 10 ; *Williams* v. *W.* [1900], 1 Ch. 152 ; 69 L. J. Ch. 77.

Acknowledgment given to prior incumbrancer does not affect subsequent one.

An acknowledgment by a mortgagor, or his personal representative, given to a prior incumbrancer, will not entitle that prior incumbrancer to recover, as against a subsequent incumbrancer, more than six years' arrears of interest : *Bolding* v. *Lane* (1863), 1 De G. J. & S. 122 ; 32 L. J. Ch. 219.

Part payment by one co-debtor.

With regard to the Civil Procedure Act, 1833, s. 3, where there are two or more joint covenantors, the mere payment of part of the principal or interest by one, will not prevent the statute from running in favour of the other : Mercantile Law Amendment Act, 1856, s. 14.

When action against surety barred.

Where a surety joins in a covenant by a mortgagor of land for payment of the mortgage money, or gives a separate covenant or bond for such payment, the question whether an action against the surety is barred at the end of twelve years or not until the end of twenty years, remains unsettled : *Re Frisby* (1889), 43 Ch. D. 106 ; 59 L. J. Ch. 94.

Simple contract debt charged on land. 21 Jac. 1, c. 16, s. 3.

Where a simple contract debt is also charged on land, an action against the debtor must be brought within six years, being the period fixed by the Lim. Act, 1623, and the payment of interest by one of several joint debtors does not keep the debt alive against the others : *Barnes* v. *Glenton* [1899], 1 Q. B. 885 ; 68 L. J. Q. B. 502.

(*z*) *Hunter* v. *Nockolds* (1850), 1 Mac. & G. 640 ; 19 L. J. Ch. 177 ; see also *Re Lloyd* [1903], 1 Ch. 385 ; 72 L. J. Ch. 78.

(*a*) *Sinclair* v. *Jackson* (1853), 17 Beav. 405 ; *Mellersh* v. *Brown* (1890), 4 Ch. D. 225 ; 60 L. J. Ch. 43.

When mortgagor barred of his right of redemption.

By the Act of 1874, s. 7, when a mortgagee has taken possession, the mortgagor's right to redeem will be barred at the end of twelve years from the time of taking possession,(*b*) unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption is given to the mortgagor or some person claiming under him, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him, in which case the time will run from the date of the acknowledgment, or the last acknowledgment, if more than one. The section makes provision for the case of there being more than one mortgagor or mortgagee, and an acknowledgment being given to or by one only. Twelve years' uninterrupted possession by the mortgagee without intermediate payment or acknowledgment is an absolute bar as against the mortgagor and all persons claiming under him, though he or they may have been under disability, and though the right of redemption may have been devised to a tenant for life with remainders over.(*c*)

Right of redemption not revived by subsequent acknowledgment.

Where a mortgagee has been in possession for more than the statutory period without acknowledgment, the right of redemption is extinguished : R. P. Lim. Act, 1833, s. 34 ; and cannot be revived by a subsequent acknowledgment.(*d*)

Mortgagee in possession ; interest is personalty.

The interest of a mortgagee in possession of freehold land is personal estate until the mortgagor is statute-barred. It then becomes real estate : *Re Loveridge* [1904], 1 Ch. 518 ; 73 L. J. Ch. 15. But after 1925 the question of conversion will seldom be material. Where the mortgage is held by trustees and the right of redemption is barred the trustees hold the land on trust for sale with power to postpone : L. P. Act, 1925, s. 31 ; but if the advance was made out of capital money under the S. L. Act they must, if the tenant for life or statutory owner so requires, instead of selling the land, execute such subsidiary vesting deed as would have been required if the land had been acquired on a purchase with capital money : *ib.*, sub-s. 4 ; see also S. L. Act, 1925, s. 10, also *Re Bogg* [1917], 2 Ch. 239 ; 86 L. J. Ch. 536.

(*b*) See *Re Metropolitan, &c., Bldg. Socy.* [1911], 1 Ch. 698 ; 80 L. J. Ch. 387, where this rule was applied, though the whole of the mortgage money was not repayable at the date when possession was taken. As to the meaning of possession, see *Kirby* v. *Cowderoy* [1912], A. C. 599 ; 81 L. J. P. C. 222.

(*c*) *Forster* v. *Patterson* (1881), 17 Ch. D. 132 ; 50 L. J. Ch. 603 ; *Browne* v. *Bishop of Cork* (1841), 1 Dr. & Wal. 700.

(*d*) *Sanders* v. *S.* (1881), 19 Ch. D. 373 ; 51 L. J. Ch. 276 ; see *Re Nisbet and Potts* [1906], 1 Ch. 386 ; 75 L. J. Ch. 238.

Where a mortgagee of freeholds or leaseholds acquires a title by possession after 1925, he will under an enlargement or vesting deed acquire the fee simple or the head term affected by his mortgage: L. P. Act, 1925, ss. 88 (3), 89 (3); see Vol. I. A purchaser can insist on such an enlargement or vesting deed being executed: *ib.*, s. 42.

Enlargement of mortgagee's interest.

In like manner where a mortgagee is barred, the legal estate becomes revested in the mortgagor, or, in the case of a term, merges, and no subsequent acknowledgment has any efficacy.(*e*)

Title of mortgagor when mortgagee barred.

When the right of action of a mortgagee to recover land has accrued, the possession by a first mortgagee does not suspend the running of the period of limitation against subsequent mortgagees: *Johnson* v. *Brock* [1907], 2 Ch. 533; 76 L. J. Ch. 602.

Possession by first mortgagee.

Where real estate and a policy of life assurance are comprised in the same mortgage and are subject to the same right of redemption, if the mortgagee has been in possession of the real estate for more than twelve years without acknowledgment, so that the mortgagor's right to redeem it has been barred, his right to redeem the policy is barred also: *Charter* v. *Watson* [1899], 1 Ch. 175; 68 L. J. Ch. 1.

Possession by mortgagee of real and personal estate.

Sect. VIII.—*The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable for the debt.*

It was formerly the law that if a mortgagor died intestate, or by his Will showed no contrary intention, his personal estate was liable for the payment of his mortgage debts in exoneration of the land comprised in the mortgage: *Howel* v. *Price* (1715), 1 P. Wms. 291. This rule, however, only applied where the mortgage debt was originally the debt of the deceased mortgagor; thus, if A. became entitled by descent or purchase to mortgaged land, and afterwards died intestate, his heir took the land *cum onere*, and was not entitled to have it exonerated out of the personal estate, even though upon a transfer of the mortgage in A.'s lifetime he might have covenanted to pay the money.(*f*) *A fortiori*, if a person, having only a

Old law the personalty was the primary security as a general rule.

Exceptions to rule.

(*e*) *Kibble* v. *Fairthorne* [1895], 1 Ch. 219; 64 L. J. Ch. 184; and see *Re Hazeldine* [1908], 1 Ch. 34; 77 L. J. Ch. 97.

(*f*) See *Bond* v. *England* (1855), 2 Kay & J. 44; 24 L. J. Ch. 671, where the subject is fully discussed.

limited interest in land subject to a mortgage, entered into a bond or covenant for payment of the debt, the bond or covenant was considered as auxiliary only. Again, the rule did not apply where an intention appeared on the face of the mortgage deed, or could be implied from the dealings with the property, that the land should be the primary security. Thus, where a mortgage was made containing the usual covenant by the mortgagor for payment of the mortgage money, and subsequently the mortgagor settled the property, subject to the mortgage upon trust for himself for life, with remainders over, leaving in himself the ultimate reversion in fee, which he devised by his Will, it was held that his general personal estate was exonerated from the mortgage debt, the court considering that the subsequent dealing with the property showed the intention of the mortgagor to make the land the primary security: *Langdale* v. *Briggs* (1856), 8 De G. M. & G. 391; 26 L. J. Ch. 27. Where property was mortgaged, and was then settled by the mortgagor subject to the mortgage, with a proviso that the land should be the primary security, and the mortgagor afterwards paid off the debt out of his own money, it was held that the mortgage debt was to be considered as kept on foot for the benefit of his personal estate: *Pears* v. *Weightman* (1856), 2 Jur. (N. S.) 586.

New law.

The law on this subject has been altered by the Ad. of E. Act, 1925, s. 35, which replaces the Real Estate Charges Acts, 1854, 1867 and 1877, and extends the principle to mortgaged property generally.

The result is that where a person (within s. 35), by his Will disposes of an interest in property which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge, or otherwise (including a lien for unpaid purchase-money), the property charged is the primary fund for payment of the mortgage debt or the unpaid purchase-money, as the case may be, whether the deceased has died intestate or has disposed of the property by his Will, unless the deceased has by any document expressed a contrary intention. Such contrary intention will not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate or residuary real estate, or by a charge of the debts upon any such estate, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the

Mortgaged property now the primary fund.

charge.(*g*) If freeholds or enfranchised land and leaseholds are together made the subject of a mortgage or contract, the burden may have to be borne by the respective estates according to their value.

Aggregate gift.

Where lands of any tenure form the subject of an aggregate gift to the same person the donee cannot accept the beneficial and disclaim the onerous part, but takes the whole subject to the burden in exoneration of the other property: *Re Kensington* [1902], 1 Ch. 203; 71 L. J. Ch. 170.

A judgment debt, on which a writ of *elegit* has been issued and the land delivered to the creditor thereunder, comes within the section, hence the land is primarily liable.(*h*)

Effect when real estate and property to which Acts did not apply were subjects of same mortgage.

Where, before 1926, real estate and also property to which the Acts did not apply were the subjects of the same mortgage, in the administration of the mortgagor's estate, the real estate had to bear such proportion of the mortgage debts as the value of such real estate bore to the value of the whole of the mortgaged property: *Trestrail* v. *Mason* (1878), 7 Ch. D. 655; 47 L. J. Ch. 249. When two properties are subject to the same mortgage, and one of them is specifically disposed of and the other passes under a residuary gift, the two properties must rateably bear the mortgage debt: *Re Smith* (1886), 33 Ch. D. 195; 55 L. J. Ch. 914.

Primary liability of husband on mortgage of wife's land.

Upon a mortgage by a husband and wife (married before 1883), of the wife's land, to which she became entitled before 1883, where the money is received by the husband, the husband and his estate are primarily liable.(*i*) If the deed states that the money is paid to the husband and wife, that is *prima facie* a payment to the husband; but it may be shown by extrinsic evidence that the payment was in fact for the benefit of the wife, and in that case the land will be primarily liable.(*j*)

Contrary intention.

(*g*) As to what amounts to a contrary intention, see *Re Fleck* (1888), 37 Ch. D. 677; 57 L. J. Ch. 943; *Re Nevill* (1890), W. N. 125; 59 L. J. Ch. 511; *Re Hesketh* (1900), 45 Sol. J. 11; *Re Valpy* [1906], 1 Ch. 531; 75 L. J. Ch. 301. If other property of insufficient value is charged with the debt, the mortgaged property will remain primarily liable for the balance: *Re Birch* [1909], 1 Ch. 787; 78 L. J. Ch. 385.

(*h*) *Re Anthony* [1892], 1 Ch. 450; 61 L. J. Ch. 434; and see *Re Bowerman* [1908], 2 Ch. 340; 77 L. J. Ch. 594.

(*i*) *Tate* v. *Austin* (1714), 1 P. Wms. 264; *Pocock* v. *Lee* (1707), 2 Vern. 604; see *Scholefield* v. *Lockwood* (1863), 33 L. J. Ch. 106.

(*j*) *Hudson* v. *Carmichael* (1854), Kay, 613; 22 L. J. Ch. 893; *Hall* v. *H.* [1911], 1 Ch. 487; 80 L. J. Ch. 340.

SECT. IX.—*Priority of incumbrances and the doctrine of notice.*

Cases in which questions of priority arose.

Questions of priority arose where the same property was, before 1926, the subject of several mortgages, and was disposed of to a person without knowledge of the facts. For instance, prior incumbrances may have been concealed from a subsequent mortgagee. Again, a sale or mortgage may have been made by a person who was a trustee without power to sell or mortgage, or who was affected by notice of prior trusts or incumbrances, or whose title was otherwise defective in equity. In the former case a question arose between the successive mortgagees; and in the latter, between the purchaser or mortgagee on the one hand, and the persons whose rights were prejudiced by the sale or mortgage on the other.

Rules formerly applicable to such questions.

In determining such questions, two rules had, in the case of mortgages made before 1926, to be borne in mind. The first was that where the equities were equal, the rights of the person who had the legal estate prevailed; and the second was that as between persons having only equitable interests, if those equities were in other respects equal, priority of time gave the better equity, for *qui prior est tempore potior est jure.*

Priorities of mortgages made after 1925.

As regards mortgages made after 1925, these rules have been fundamentally altered as respects mortgages affecting legal estates.

Under L. P. Act, 1925, s. 97, every mortgage (legal or equitable, not being a mortgage by deposit of documents relating to the legal estate affected) will rank according to its date of registration as a land charge, but this section does not apply to legal mortgages registered by way of memorial in a deed register, nor to charges affecting registered land, see also L. C. Act, 1925, s. 10, Class C (i). If the security includes any land outside the jurisdiction of a deeds registry, the mortgage must also be registered as a land charge.

Mortgages transferred after 1925.

If a "puisne mortgage" (as defined in L. C. Act, 1925, s. 10, Class C (i)), though created before 1926, is transferred after 1925, it must be registered within one year from the transfer in the same way as if it had been created after 1925: *ib.*; otherwise it will not be enforceable against a purchaser for value: *ib.*, ss. 14 (2), 20 (8).

Registration of puisne mortgages made before 1926.

Where a "puisne mortgage" created before 1926, is converted without affecting priorities, into a legal mortgage by demise or sub-demise (L. P. Act, 1925, 1st Sch., Pts. VII and VIII) it will not, as against a purchaser in good faith without notice

thereof obtain any benefit by reason of being converted into a legal mortgage unless it has been registered as a land charge or in a local deeds register : *ib.*, Pt. VII, para. 6; Pt. VIII, para. 5. Accordingly, if not already registered in a deeds registry, it may be necessary to register it as a land charge (L. C. Act, 1925, s. 10 (7)) on 1st January, 1926, or as soon thereafter as practicable. If a mortgagee by deposit is not satisfied that he has all the material deeds relating to the legal estate he should register a land charge : *ib.*, s. 10, Class C (iii).

Mortgages by deposit.

Registration whether in a deeds register (L. P. Act, 1925, ss. 11 and 197, now confined to instruments transferring, creating or being evidence of the devolution of legal estates), or under the L. C. Act, 1925 (in the main confined to equitable interests, but including " puisne mortgages " which are legal), gives notice for all purposes : L. P. Act, 1925, ss. 197-8; but subject to the special restrictions imposed by s. 94 to enable further advances to be made with safety.

Registration gives notice.

Thus, provided that the matter is one which can properly be registered (this is no concern of the Land Registrar, he will generally speaking register whatever is put before him), and if so registered, it will be difficult, if not impossible, for a purchaser after 1925 to escape notice, save in the special cases provided for by s. 94 in regard to further advances.

On the other hand, after 1925, express notice, independently of registration, may be of no value as against a purchaser, where the matter *must* (not merely *may* as in the case of puisne mortgages made before 1926 and not transferred after 1925) be registered under the L. C. Act, 1925, for under L. P. Act, 1925, s. 199 (1) (i), a purchaser is not affected by notice of any matter capable of registration under the L. C. Act, 1925, or the Acts replaced thereby which is void or not enforceable against him : *ib.*, ss. 5 (annuities), 7 (1) (writs and orders), 9 (deeds of arrangement), 13 and 14 (land charges) by reason of the non-registration thereof. But express notice is material as respects pending actions : *ib.*, s. 3 (1). A special rule applies as to notice of a bankruptcy petition or receiving order : L. C. Act, 1925, ss. 3 (1), (3), 7 ; the filing of a petition in bankruptcy does not of itself operate as express notice of any act of bankruptcy mentioned in the petition.

Restrictions on notice.

Under the new law a legal estate has the same incidents as a legal estate under the old law : L. P. Act, 1925, s. 1 (4), hence must confer the same protection on a purchaser who

Legal estates acquired by a purchaser without notice of equitable interests.

acquires it without notice of equitable interests. Purchasers are bound to see that the deeds are in the proper custody : *ib.*, s. 13. But a purchaser after 1925 will generally get notice by means of registration; though even that may not prejudice his title, for the overreaching provisions (operating by way of substituting money for land) are not necessarily affected by the fact of registration : L. C. Act, 1925, s. 22.

Saving of over-reaching provisions.

These overreaching provisions are material to mortgagees when taking a security to which S. L. Act, 1925, s. 72 (effect of conveyance), applies : see also *ib.*, ss. 69-71, 82. The powers to raise money, &c., conferred on a tenant for life, are also exercisable by trustees for sale (L. P. Act, 1925, s. 28), and by personal representatives : Ad. of E. Act, 1925, s. 39.

Cases where purchaser takes free from equitable interests for want of notice.

It is clear that a purchaser of a legal estate, without notice, still takes free from equitable interests created before 1926, and not coming within L. C. Act, 1925 : see the examples given in L. P. Act, 1925, s. 2 (5).

Trusts affecting mortgage debts.

After 1925, a purchaser who has express notice of trusts affecting mortgage debts will be able to ignore them : L. P. Act, 1925, s. 113.

Protection under old law afforded by the legal estate.

Purchaser without notice might protect himself against trusts, &c., by legal estate.

It has long been settled that if a person being a trustee under an express trust, or being affected by notice of a trust or incumbrance, conveys the legal estate to a purchaser or mortgagee for valuable consideration who has no notice, the latter is protected from such trust or incumbrance by the possession of the legal estate, and acquires an indefeasible title both at law and in equity, so that he may himself afterwards effectually sell or mortgage even to persons who have notice.(*k*)

Some cases to which rule applied.

It follows that if B. takes a conveyance or mortgage of the legal estate from A. under circumstances which would make the transaction impeachable in equity as against B., either by A. himself, or by some person for whom A. is a trustee, and B. subsequently conveys the legal estate to C. as a purchaser for valuable consideration, and without notice, either actual or constructive, of such circumstances, C.'s title cannot be impeached. Thus, if A., being a mortgagee with a power of sale,

(*k*) *Pilcher* v. *Rawlins* (1872), L. R. 7 Ch. 259 ; 41 L. J. Ch. 485, see also *Taylor* v. *London, &c., Bk.* [1901], 2 Ch. 231, 256 ; 70 L. J. Ch. 477 ; but *cf. Gordon* v. *Holland* [1913], 82 L. J. P. C. 81, where the property was resold to the original vendor.

sells to B. under circumstances which would enable A.'s mortgagor to set aside the sale as against B., and B. subsequently sells or mortgages to C., who has no notice of such circumstances, C. is protected by the possession of the legal estate : *Bailey* v. *Barnes* [1894], 1 Ch. 25 ; 63 L. J. Ch. 73.

Abolition of Tacking.

To the above extent the old law, though the cases to come within it must be few, in effect, remains good, but tacking which resulted therefrom has been abolished, without prejudice to any priority acquired thereby before 1925 : L. P. Act, 1925, s. 94 ; and subject to the new law as to further advances laid down in that section. Indeed now that there can be a succession of legal mortgages, whether affecting freeholds or leaseholds, it could seldom have been employed even if it remained permissible.

Abolition of tacking.

Thus after 1925 it will not be feasible for a third mortgagee who advanced money without notice of the second mortgage, by taking a conveyance of a legal estate from the first mortgagee to acquire priority over the second mortgage. A second mortgagee, if he has not got the deeds, will usually register a land charge. If this is done a third mortgagee could not take without notice. If the second mortgage is created or transferred after 1925 registration will be obligatory. In default a third mortgagee who registers a land charge will then acquire priority.

A purchaser or mortgagee, who, after completing his purchase or mortgage, becomes aware that the legal estate is vested in a trustee upon express trusts, has never been able to protect himself against such trusts by taking a conveyance of the legal estate from the trustee ; for by taking a conveyance with notice of the trusts, he himself becomes the trustee, and must not, to get a plank to save himself, be guilty of a breach of trust.(*l*)

Purchaser taking legal estate from express trustee with notice, not protected.

After 1925 a purchaser or mortgagee (not being a mortgagee by deposit) will usually insist on acquiring a legal estate : L. P. Act, 1925, s. 42.

The rule was the same where the trust was a constructive one. Thus, if a first mortgagee, after his mortgage had been satisfied, conveyed the legal estate to a third mortgagee, and at the time of such conveyance both parties were aware of a second mortgage, the third mortgagee, though he had no notice of the second

Third mortgagee taking a conveyance from first mortgagee who has been previously paid off, not protected.

(*l*) *Harpham* v. *Shacklock* (1881), 19 Ch. D. 207 ; *Taylor* v. *London, &c., Bk.* [1901], 2 Ch. 231, 257 ; 70 L. J. Ch. 477 ; and see *Perham* v. *Kempster* [1907], 1 Ch. 373 ; 76 L. J. Ch. 223.

mortgage when he advanced his money, did not by such transaction obtain priority. The first mortgagee, having become a trustee for the second, committed a breach of duty in conveying the legal estate to the third, who, being aware of such breach of duty, was not allowed to profit thereby.(*m*)

Further advances.

The law as to further advances is now governed by L. P. Act, 1925, s. 94, and has already been explained.

How far protection of legal estate applies to transferee of a mortgage.

In the application of the doctrine as to the protection afforded by the legal estate to the transferee of a mortgage, it must be borne in mind that a mortgage has always been regarded in equity as a mere security for a debt; this aspect is emphasised by the new form of security, namely, a charge by way of legal mortgage. Hence the interests of persons claiming under a mortgage in the land affected thereby are regulated by their interests in the debt, for which the land is a security. If, then, B., by fraud, induces A. to execute to him a mortgage, no money passing from B. to A., and no debt being in fact contracted, and if B., without the concurrence of A., subsequently transfers such mortgage to C. for valuable consideration, it is conceived that C. is in no better position than B., for as no debt was due to B., no debt passes to C.;(*n*) and as the land was not the subject of the transaction, but the debt for which the land was only a security, C. cannot retain the land as against A. where there is no debt. In fact the mortgage is a nullity.

Transferee of a fraudulent mortgage can be in no better position than transferor.

Mortgage *ultra vires*.

Again, if A. mortgages land to B., who knows that A. is a trustee without a power to mortgage, or having such power is improperly exercising it, no debt is created as against the land and the beneficial owners of it. If, then, B. afterwards transfers such mortgage to C., then C., though without notice of the trust, can only stand in the shoes of B., and will not be allowed to retain the charge on the land against the beneficiaries of A.(*o*)

Money-lender's mortgage.

On the other hand a transferee without notice of a mortgage to a money-lender, which is void under the Money-lenders Act, 1900, for want of registration, obtains a valid security unless he is himself a money-lender: Money-lenders Act, 1911, s. 1.

Distinction where mortgagor joins in transfer.

But where the mortgagor joins in the transfer of a mortgage,

(*m*) *Bates* v. *Johnson* (1859), John. 304; 28 L. J. Ch. 509; *West London, &c., Bk.* v. *Reliance, &c., Socy.* (1885), 29 Ch. D. 954; 54 L. J. Ch. 1081; *Re Magneta Time Co.* [1915], 84 L. J. Ch. 814.

(*n*) *Parker* v. *Clarke* (1861), 30 Beav. 54; *Rolt* v. *White* (1862), 31 Beav. 520; 3 De G. J. & S. 360.

(*o*) *Burt* v. *Trueman* (1860), 29 L. J. Ch. 902; see also *Adsetts* v. *Hives* (1863), 33 Beav. 52.

it is conceived that the transaction is to be treated as a new one, and that the transferee is not affected by any equitable right binding the original mortgagee of which he (the transferee) has not himself notice.

Payment off.

When a mortgage is paid off the person redeeming should insist on the receipt being immediately endorsed on the mortgage and the documents of title being handed over.

If this is not done the person having the best right to a surrender or a transfer of the mortgage might lose that right.

Notice, actual or constructive.

Reference has already been made to L. P. Act, 1925, s. 199, which prevents a purchaser from being affected by notice of matters which ought to be and are not registered and re-enacts the restrictions on constructive notice.

The inspection referred to in this section does not extend to a personal examination of the property : *Slack* v. *Hancock* [1912], 107 L. T. 14.

Mortgagee should require mortgagor to deduce a reasonable title.

It is the duty (*p*) of a mortgagee to require the mortgagor to deduce and prove such a title to the legal estate as is required under the new law (see, *e.g.*, L. P. Act, 1925, ss. 10, 42-5), and if he neglects to do so he will be affected with constructive notice of the contents of any deed relating to the legal estate and forming part of the chain of title. This rule is not quite the same in regard to leaseholds, for *Patman* v. *Harland* (1881), 17 Ch. D. 353 ; 50 L. J. Ch. 642, has been overruled by s. 44 (5), still an intending lessee or assign, when not entitled to call for an abstract of title to the freehold or leasehold reversions, should ask for sufficient information to enable him to make the requisite searches, for under ss. 197-8 registration is notice for all purposes, whether or not an abstract has been furnished. In particular he should ask whether any restrictive covenants made before 1926 affect the land.

Intending lessee, duties of.

Notice of a deed affecting legal estate.

If a mortgagee has notice of a deed appearing to affect the legal estate in the property, he ought to require its pro-

(*p*) The term " duty," as here used, does not mean that a mortgagee owes any duty to the possible holder of an adverse interest. It merely means the course which a man honestly dealing for his own interest ought to follow, with a view to his own title and security. If he does not follow that course, the omission of it, in the absence of explanation, may be evidence of a design, inconsistent with honest dealing, to avoid knowledge of the true state of the title, see per Lord Selborne, in *Agra Bank* v. *Barry* (1874), L. R. 7 H. L. 157.

duction, and if he does not, he will be deemed to have notice not only of its contents, but of the contents of any instruments which would have been disclosed by an examination of it,(*q*) but he is not as a rule affected, nor (subject to the special exceptions in S. L. Act, 1925, s. 110 (2)) can he enquire into any of the matters contained in a trust instrument, for the vesting instruments are the documents that he is concerned with. He will also be deemed to have notice of everything which he would have learnt had he required production of a deed relating to a legal estate, *e.g.*, that the deed had been deposited as a security.(*r*) Land Registry endorsements on documents of title may give actual notice of the registration, and constructive notice of the facts which would be ascertained by inspecting the register or by requiring the land certificates to be produced(*s*).

Notice of mortgage.

Notice of a mortgage is notice of everything auxiliary to it ; but if the same deed contains two charges on two distinct properties, a notice given of one charge is not notice of the other : *Re Bright* (1856), 21 Beav. 430 ; 25 L. J. Ch. 449. A purchaser, though he may have notice, will not be concerned with charges which will be defeated by the conveyance, whether under overreaching powers or for want of registration.

Moreover, a trustee or personal representative who obtains notice in regard to one trust is not affected with notice for the purposes of another trust : T. Act, 1925, s. 28.

Notice of occupation by tenant.

The occupation of land by a tenant affects a purchaser or mortgagee with constructive notice of all the tenant rights, but not with notice of his lessor's title or rights : *Hunt* v. *Luck* [1902], 1 Ch. 428; 71 L. J. Ch. 239. Hence, inquiries should be made of the tenants and other occupiers : L. P. Act, 1925, ss. 12 and 14.

Search in register county.

As regards property situated in a register county, a purchaser who has obtained a certificate of search is not bound to enquire whether there are any unregistered deeds : *Agra Bank* v. *Barry*, (1874), L. R. 7 H. L. 157. After 1925 these registers will only relate to documents transferring, creating or evidencing the devolution of legal estates : *ib.*, s. 11 ; such registration is

(*q*) *Coppin* v. *Fernyhough* (1788), 2 Bro. C. C. 291 ; *Eland* v. *E.* (1838), 1 Beav. 235 ; 4 My. & Cr. 420 ; 8 L. J. Ch. 289 ; *Davies* v. *Thomas* (1836), 2 Y. & C. 234 ; 7 L. J. Ex. Eq. 21 ; and see *Berwick* v. *Price* [1905], 1 Ch. 632 ; 74 L. J. Ch. 249.

(*r*) *Peto* v. *Hammond* (1861), 30 Beav. 495 ; 31 L. J. Ch. 354 ; *Oliver* v. *Hinton* [1899], 2 Ch. 264 ; 68 L. J. Ch. 583.

(*s*) *Re De Leeuw* [1922], 2 Ch. 540 ; 91 L. J. Ch. 617.

notice for all purposes : *ib.*, s. 197 ; save in regard to further advances : *ib.*, s. 94. It is essential that registration should be notice as memorials of " puisne mortgages " will be registered.

Notice to solicitor, notice to client.

The rule that a person is deemed to have notice of all facts which come to the knowledge of his solicitor or counsel in the course of the same transaction (*t*) is founded on the presumption that a solicitor communicates such facts to his client, and does not apply where the fact, with notice of which the client is sought to be charged, is one which the agent would certainly conceal, as, *e.g.*, a fraudulent act of his own : *Cave* v. *C.* (1880), 15 Ch. D. 639 ; 49 L. J. Ch. 505. When the mortgagor is himself a solicitor and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor will be considered the agent of the mortgagee in the transaction.(*u*)

Exception in case of fraud.

Where mortgagor and mortgagee employ the same solicitor the mortgagor's knowledge is not notice to the mortgagee : *Re Cousins* (1886), 31 Ch. D. 671 ; 55 L. J. Ch. 662.

Receipt forged.

A forged receipt on a memorandum of deposit does not alter the position of the parties : *Jared* v. *Clements* [1903], 1 Ch. 428 ; 72 L. J. Ch. 291.

Negligence and Deeds.

Priority, how affected by non-possession of deeds.

Cases have frequently arisen in which it is sought to postpone a legal mortgagee not holding the title deeds to a subsequent equitable mortgagee holding them, on the ground of negligence on the part of the former. Under the old law the non-possession of the deeds did not deprive the legal mortgagee of his priority, unless it appeared that he had omitted to obtain them, or had parted with the possession of them under circumstances from which the court would infer fraud or gross negligence.(*v*) If he had inquired for the deeds, and his omission to get them, or his subsequent giving them up to the mortgagor, had arisen from misrepresentation on the part of the latter, by which he had been deceived, or was otherwise explicable, fraud or gross negligence would not be imputed, and the priority would not be lost : *Brown* v. *Stedman* [1896], 44 W. R. 458.

Not lost, unless there was fraud or gross negligence tantamount to fraud.

Secus, if any reasonable excuse was given.

(*t*) L. P. Act, 1925, s. 199 ; *Taylor* v. *London, &c., Co.* [1901], 2 Ch. 231, 257 ; 70 L. J. Ch. 477 ; and see the Money-lenders Act, 1911, s. 1 (2).

(*u*) *Hewitt* v. *Loosemore* (1851), 9 Hare, 449 ; 21 L. J. Ch. 69. But see *contra, Espin* v. *Pemberton* (1859), 3 De G. & J. 547 ; 28 L. J. Ch. 311.

(*v*) *Northern Counties, &c., Co.* v. *Whipp* (1884), 26 Ch. D. 482 ; 53 L. J. Ch. 629 ; *Oliver* v. *Hinton* [1899], 2 Ch. 264, 274 ; 68 L. J. Ch. 583 ; *Taylor* v. *London, &c., Bk.* [1901], 2 Ch. 231, 260 ; 70 L. J. Ch. 477 ; *Walker* v. *Linom* [1907], 2 Ch. 104 ; 76 L. J. Ch. 500.

Possession of deeds after 1925.

After 1925 if both the mortgagees are legal mortgagees the mortgagee who does not obtain the deeds should register a land charge in respect of his mortgage. For instance, if a portions term is mortgaged the mortgagors would not have the deeds, and after the charge is converted into a legal mortgage the estate owner could not properly hand over the deeds if the settlement was still subsisting; in such a case the mortgagees would register a land charge. Then, when a subsequent legal mortgage was made and the deeds were handed over the mortgagee thereunder would have notice of the prior mortgage by reason of the registration. If the portions mortgage was not protected by registration it could not be enforced against the subsequent mortgagee: L. C. Act, 1925, s. 13 (2). It follows that after 1925 the possession of the deeds is made of greater importance than under the old law, save where the title is registered under the L. R. Act, 1925, in which case entries in the register take the place of deeds relating to the legal estate.

Mortgagee authorising mortgagor to raise money by means of deeds will be post-poned, though authority is exceeded.

If a mortgagee gives up the deeds to the mortgagor for the purpose of enabling him to raise money on them, but makes certain conditions, *e.g.*, that a limited sum only shall be raised or that the second mortgagee shall be informed of the prior security, and the mortgagor transgresses the conditions by borrowing a larger sum than was agreed on,(*w*) or by concealing the first mortgage: *Briggs* v. *Jones* (1870), L. R. 10 Eq. 92, the first mortgagee will, whether the mortgage is made before or after 1926, be postponed to the second one, not on the ground of fraud, but because, having authorised the mortgagor to raise money by means of the deeds, he cannot, as against a person who makes an advance on the faith of the possession of the deeds, insist that the authority has been exceeded.(*x*) But after 1925, even if the deeds are handed over, the intending mortgagee should obtain the usual certificates of search, for a previous mortgage may have been made and protected by a land charge at a time when it was not possible to make over the deeds. Special care must be taken, when deeds are lent for any purpose, that persons dealing with the borrower are not deceived by the deeds being in his possession.

Gross negligence.

To deprive a mortgagee of the protection of the legal estate it was not essential under the old law that he should have been

(*w*) *Perry Herrick* v. *Attwood* (1857), 2 De G. & J. 21; 27 L. J. Ch. 121; *Rimmer* v. *Webster* [1902], 2 Ch. 163; 71 L. J. Ch. 561.

(*x*) *Brocklesby* v. *Temperance B. S.* [1895], A. C. 173; 64 L. J. Ch. 433.

guilty of fraud. It was sufficient if he had shown such gross negligence as would render it unjust to deprive the other incumbrancer of his priority : *Oliver* v. *Hinton* [1899], 2 Ch. 264 ; 68 L. J. Ch. 583.

Gross negligence has been defined as such carelessness as no reasonable person would use in the conduct of his affairs, showing a mental indifference to obvious risks : *Hudston* v. *Viney* [1921], 1 Ch. 98 ; 90 L. J. Ch. 149. After 1925 the following matters will have to be taken into account—First, has the mortgagee obtained a legal estate ; secondly, did he obtain the deeds when that was practicable ; thirdly, if the deeds were not handed over did he protect his mortgage by registration ; and fourthly, were the proper certificates of search obtained before the mortgage was completed.

For where more than one set of mortgagees have legal estates it is clear that the possession of a legal estate cannot be the deciding factor.

Handing over deeds.

Where, before 1926, one of two executors of a legal mortgagee gave up the title deeds to the mortgagor, and thereby enabled him to commit a fraud by executing a mortgage of the same property to a bank, it was held that the other executor, who was the survivor and to whom the legal estate passed, was not on that account to be postponed to the bank : *Re Ingham* [1893], 1 Ch. 352 ; 62 L. J. Ch. 100. If this had occurred after 1925 the result would have been the same if the first mortgage had been protected by registration. If there had been no such registration it is conceived that the first mortgage, which, for want of deeds to protect it, would have become a " puisne mortgage " would have been postponed ; the mortgagor could have given a legal mortgage to the bank together with the deeds.

Mere carelessness did not deprive legal mortgagee of priority.

Mere carelessness or want of prudence before 1926 was not sufficient ground for postponing a legal mortgagee. Thus, where the manager of a company mortgaged his own property to the company, and afterwards abstracted the deeds from the company's safe by means of a key, which was entrusted to him as manager, and then executed a mortgage to another person and delivered to him the deeds, it was held that the company had not lost their priority.(*y*) But after 1925 the second mortgage would also have been a legal mortgage and the

(*y*) *Northern Counties, &c., Co.* v. *Whipp* (1884). 26 Ch. D. 482 ; 53 L. J. Ch 629 ; and see *Grierson* v. *Nat. Prov. Bk.* [1913], 2 Ch. 18 ; 82 L. J. Ch. 481.

company's mortgage would have become a puisne mortgage, hence for want of registration might be postponed.

Whether all mortgages should be registered.

To meet these exceptional cases it has been suggested that even where the deeds are handed over all mortgages should be protected by registration either as land charges or in a local deeds register. That is a counsel of perfection which may be adopted in special cases. Certainly it should be done if and when the deeds are taken out of the custody of mortgagees.

Handing over deeds on payment off.

Under L. P. Act, 1925, s. 96 (2), an indemnity is given to a mortgagee who when paid off delivers the documents to a person not having the best right thereto unless he has notice of a better right. It is a moot point whether the mortgagee ought to require the person paying to produce a certificate of search to shew that there are no puisne mortgages : *ib.*, ss. 197, 198, under which registration gives notice. But as by reason of s. 94 subsequent mortgages will give express notice to prior mortgagees the point is of no great importance. Generally a mortgagee will be safe in endorsing a receipt under s. 115 which will operate as a discharge or a transfer as the case requires.

Priority as between equitable incumbrancers.

Old law.

Where the interests, created before 1926, of all of the incumbrancers are equitable only, either by reason of the legal estate being outstanding, or from the property being of an equitable nature, then if the equities of all parties are in other respects equal, *i.e.*, if there are no special circumstances entitling one of the parties, in preference to another, to the assistance of the court, the incumbrances rank according to their order of date.(*z*) In such a case the rule *qui prior est tempore, potior est jure*, applies. Thus, if a mortgagee of an equitable interest before 1926, who was in fact a trustee, though not so expressed in the mortgage deed, fraudulently transferred the mortgage to another for valuable consideration, or if a legal mortgagee, who was in fact a trustee, fraudulently deposited the deeds as a security, the transferee or depositee took subject to the claims of the beneficiary, assuming that the latter had not been guilty of negligence.(*a*) There never could be any tacking where all the

(*z*) *Brace* v. *Marlborough* (1728), 2 P. Wms. 495, 7th Resolution ; see *Coleman* v. *London C. & W. Bank* [1916], 2 Ch. 353 ; 85 L. J. Ch. 652.

(*a*) *Cory* v. *Eyre* (1863), 1 De G. J. & S. 149 ; *Re Richards* (1890), 45 Ch. D. 589 ; 59 L. J. Ch. 728 ; *Taylor* v. *London, &c., Co.* [1901], 2 Ch. 231 ; 70 L. J. Ch. 477 ; *Hill* v. *Peters* [1918], 2 Ch. 273 ; 87 L. J. Ch. 584 (declaration of trust of equitable reversionary interest).

incumbrances were equitable, so that a third mortgagee gained no advantage by taking a transfer of the first mortgage, where the legal estate was outstanding.

But if one party had by negligence conduced to a fraud, he was postponed.

But if the party whose right was prior in time had, by his own negligence, conduced to the fraud committed on the other, he was postponed, as in such case his equity was inferior. Thus, where a vendor conveyed land, and signed a receipt for the purchase-money, which, however, he did not receive, and the deeds were delivered to the purchaser, who afterwards deposited them by way of equitable mortgage, the equitable mortgage was held to have priority over the vendor's lien.(*b*) Again, when A. was induced by his solicitor to execute a deed, which was in fact a conveyance to the solicitor as on a sale, and to sign the receipt for the purchase-money indorsed on the deed, trusting to his statement that the deed was a mere form, and afterwards the solicitor deposited the title deeds with B. by way of equitable mortgage to secure a debt, B. was held to have priority over A.: *Hunter* v. *Walters* (1871), L. R. 7 Ch. 75 ; 41 L. J. Ch. 175.

Whether, as between two equitable mortgagees, the amount of negligence necessary to postpone the one who was prior in time was the same as was required to postpone a legal mortgagee to an equitable one seems doubtful.(*c*) The equities of beneficiaries prevailed over equities subsequently derived from trustees who had acted in breach of trust : *Capell* v. *Winter* [1907], 2 Ch. 376 ; 76 L. J. Ch. 496. The equities of assignees of a beneficiary prevailed over claims by trustees against the trust property, unless the assignees, by standing by, allowed the debt to the trustees to be incurred : *Re Pain* [1919], 1 Ch. 38 ; 87 L. J. Ch. 550.

Mortgagee of equitable interest before 1926.

Before 1926 a mortgagee of an equitable interest in land was not bound to give notice to the owner of the legal estate, and was not postponed to a subsequent mortgagee of the equitable interest who had given notice : *Hopkins* v. *Hemsworth* [1898], 2 Ch. 347 ; 67 L. J. Ch. 526. But it was always desirable to give notice to prevent the legal estate being conveyed to a purchaser without notice.

(*b*) *Rice* v. *R.* (1853), 2 Drew. 73 ; 23 L. J. Ch. 289 ; see also *Bickerton* v. *Walker* (1885), 31 Ch. D. 151 ; 55 L. J. Ch. 227 ; *Bateman* v. *Hunt* [1904], 2 K. B. 530 ; 73 L. J. K. B. 782.

(*c*) *Farrand* v. *Yorkshire Bkg. Co.* (1888), 40 Ch. D. 182 ; 58 L. J. Ch. 238 ; *Taylor* v. *Russell* [1892], A. C. 244; 61 L. J. Ch. 657 ; see *Taylor* v. *London, &c., Co., supra.*

Notices of dealings with equitable interests now essential.

After 1925 notice in writing of all dealings with equitable interests in land, capital money and securities must be given in accordance with L. P. Act, 1925, s. 137, or if a trust corporation has been nominated under s. 138, then the notice must be given to that corporation. But in the case of registered land, the notice must be given to the Land Registrar, when it will be entered in the Index of Minor Interests as a Priority Caution or Inhibition. These notices will regulate the priorities of competing interests in the same way as, before 1926, notices of dealings with equitable things in action regulated the priorities.

Priorities as between equitable mortgages of legal estates rank according to date of registration.

In addition to "puisne mortgages," after 1925, an equitable mortgage (not being a mortgage by deposit) affecting a legal estate will rank according to its date of registration as a land charge: L. P. Act, 1925, s. 97. This section states that it does not apply to land within the jurisdiction of a local deeds registry; this exception cannot however extend to equitable mortgages, for these cannot be registered by way of memorial in a deeds register: *ib.*, s. 11.

As respects equitable mortgages, s. 97 can only apply to equitable mortgages capable of being registered under L. C. Act, 1925, namely, limited owner's charges (Class C (ii)), general equitable charges (Class C (iii)), Inland Revenue charges (Class D (i)) and a very limited number of General Equitable Charges (Class C (iii)); for general equitable charges do not include charges arising or affecting an interest arising under a trust for sale or a settlement; these are protected under the provisions requiring money to be paid to at least two trustees or to a trust corporation; nor do they include mortgages by deposit. In the case of charges affecting interests arising under a trust for sale or a settlement, notice must be given under L. P. Act, 1925, ss. 137-8, see *supra*.

Land charges, Classes A and B, when made for securing money, take effect as legal mortgages: L. C. Act, 1925, s. 11; hence come within the definition of a "puisne mortgage": *ib.*, s. 10, Class C (i). Local land charges come within Class B, but are registered by and with the local authority.

Equitable mortgages of legal estates will seldom be made.

With the exception of limited owners' charges, Inland Revenue charges and mortgages by deposit, after 1925, equitable mortgages of legal estates will seldom be made, for there can be any number of legal mortgages affecting the same land, whether it be of freehold or leasehold tenure.

Sect. X.—*Mortgages of things in action and equitable interests in personalty.*

A thing in action was formerly inalienable at law. The Jud. Act, 1873, s. 25 (6), now repealed and reproduced by L. P. Act, 1925, s. 136, provides as follows :—

Legal assignments of things in action.

(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

(a) the legal right to such debt or thing in action ;

(b) all legal and other remedies for the same ; and

(c) the power to give a good discharge for the same without the concurrence of the assignor :

Provided that if the debtor, trustee or other person liable in respect of such debt or thing in action, has notice—

(a) that the assignment is disputed by the assignor or any person claiming under him, or

(b) of any other opposing or conflicting claims to such debt or thing in action ;

he may, if he thinks fit, call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925.

(2) This section does not affect the provisions of the Policies of Assurance Act, 1867.

The cases decided with reference to the construction of the section which this enactment replaces will be found exhaustively reviewed in 1 Wolst. & Cherry, 11th ed., p. 358, *et seq.*

Under this section the assignee of a legal thing in action may sue at law in his own name without regard to whether or not the assignment was made for valuable consideration : *Re Westerton* [1919], 2 Ch. 104 ; 88 L. J. Ch. 392.

Meaning of "absolute assignment."

Though the above enactment does not apply to an assignment by way of charge only, yet it includes an assignment subject to a proviso for redemption by way of security (*d*) or to a trustee in trust for the assignor,(*e*) so long as such assignment passes the whole interest in the whole of the debt,(*f*) but an action may be

(*d*) *Tancred* v. *Delagoa Bay Co.* (1889), 23 Q. B. D. 239 ; 58 L. J. Q. B. 459 ; *Hughes* v. *Pump House Hotel Co.* [1902], 2 K. B. 190 ; 71 L. J. K. B. 630 ; *Bateman* v. *Hunt* [1904], 2 K. B. 530 ; 73 L. J. K. B. 782.

(*e*) *Comfort* v. *Betts* [1891], 1 Q. B. 737 ; 60 L. J. Q. B. 656 ; *Fitzroy* v. *Cave* [1905], 2 K. B. 364 ; 74 L. J. K. B. 829. A right of action in respect of a tort is not assignable : *Defries* v. *Milne* [1913], 1 Ch. 98 ; 82 L. J. Ch. 1. Tort.

(*f*) *Mercantile Bk. of London* v. *Evans* [1899], 2 Q. B. 613 ; 68 L. J. Q. B 921 ; *Jones* v. *Humphreys* [1902], 1 K.B. 10 ; 71 L. J. K. B. 23 ; *Forster* v. *Baker* [1910], 2 K. B. 636 ; 79 L. J. K. B. 664.

maintained in respect of part of a debt if all persons interested are parties to the action.(*g*) The section does not affect the validity of equitable assignments.(*h*) The term "legal thing in action," in this section means any right which at law was not assignable by reason of being a thing in action, but was assignable in equity.(*i*)

Meaning of "legal thing in action."

On mortgages of personalty notice should be given to trustees.

Where the subject of the mortgage is a debt, or personalty vested in trustees, or a policy of insurance, notice in writing of the mortgage must be given to the debtor or trustees or insurance office, as the case may be; and if the subject of the mortgage is money to arise from the sale or mortgage of land, notice should be given to the trustees, though the time to sell or mortgage may not have arrived. If such notice is not given, and the debtor or trustees have no notice *aliunde* of the existence of the mortgage, the mortgagee will be postponed to a subsequent mortgagee who advances his money without notice of the prior mortgage, and himself gives due notice of his own security.(*j*) This rule applies where the first assignment is made by the beneficiary himself, and the second by his personal representative,(*k*) or where, at the time of the mortgage, there was no trustee to whom notice could have been given: *Re Dallas* [1904], 2 Ch. 385; 73 L. J. Ch. 365.

Priorities of competing claims.

What notices are sufficient.

As to the notices or endorsements in lieu of notice, now required to secure the requisite priority between competing claims: L. P. Act, 1925, s. 137, and notes thereon in 1 Wolst. and Cherry, 11th ed., 359-366. And as to what notices or endorsements are sufficient: *ib.*

Notice to solicitor of trustees.

A solicitor acting for trustees in the management of the trust has no implied authority to receive notices on their behalf. A notice given to the solicitor is ineffective unless it is communicated by him to the trustees either verbally or in writing.(*l*)

(*g*) *Conlan* v. *Carlow C. C.* [1912], 2 Ir. R. 535; *Re Steel Wing Co.* [1921], 1 Ch. 349; 90 L. J. Ch. 116.

(*h*) *Brandt & Co.* v. *Dunlop Rubber Co.* [1905], A. C. 454; 74 L. J. K. B. 898; *Re Briggs & Co.* [1906], 2 K. B. 209; 75 L. J. K. B. 591.

(*i*) *Torkington* v. *Magee* [1902], 2 K. B. at p. 430; 71 L. J. K. B. 712; and see *Re Pain* [1919], 1 Ch. 38; 87 L. J. Ch. 550.

(*j*) *Dearle* v. *Hall*, and *Loveridge* v. *Cooper* (1823), 3 Russ. 1, 30; 2 L. J. (O. S.) Ch. 62, 75; *Lee* v. *Howlett* (1856), 2 K. & J. 531; *Foster* v. *Cockerell* (1835), 3 Cl. & Fin. 456; *Re Dallas* [1904], 2 Ch. 385; 73 L. J. Ch. 365.

(*k*) *Re Freshfield* (1879), 11 Ch. D. 198; *Montefiore* v. *Guedalla* [1903], 2 Ch. 26; 72 L. J. Ch. 442.

(*l*) *Saffron Walden B. S.* v. *Rayner* (1880), 14 Ch. D. 406; 49 L. J. Ch. 465.

Notice to trustees of derivative settlement.

If a reversionary fund under a settlement is made the subject of a derivative settlement, and a beneficiary under the derivative settlement charges or otherwise disposes of his share, notice of the charge should be given to the trustees of the derivative settlement. Notice to the trustees of the original settlement will be ineffectual: *Stephens* v. *Green* [1895], 2 Ch. 148; 64 L. J. Ch. 546.

Effect of notice before fund has come into existence.

Notice before a fund has come into existence, to a person who is merely a potential future trustee, is ineffectual. Thus, notice of a covenant to pay to covenantees the proceeds of a commission in the army, given to the army agent before a sale was actually made, was held to be ineffectual.(*m*)

Notice necessary to prevent debtor from paying original creditor.

As between assignor and assignee notice is not necessary to perfect an equitable assignment: *Re Griffin* [1899], 1 Ch. 408; 68 L. J. Ch. 220; nor is it necessary to perfect a declaration of trust: *Hill* v. *Peters* [1918], 2 Ch. 273; 87 L. J. Ch. 584; but it is necessary as against the debtor or trustee himself; for payment to the original creditor will be a satisfaction of the debt, notwithstanding that the creditor may have assigned it to another for a valuable consideration, if the debtor or trustee has no knowledge of such assignment; and if the debtor has been released in a general settlement of accounts, instead of actually paying the money, the release is equally effectual: *Stocks* v. *Dobson* (1853), 4 D. M. & G. 11; 22 L. J. Ch. 884.

New trustees not bound to enquire of old trustees whether they have received notice of incumbrances.

New trustees of property including S. L. Act trustees are not bound to enquire of the old trustees whether they have received any notices of dealings by the beneficiaries.(*n*) If, therefore, a mortgagee from a beneficiary gives notice to the then trustees, and the latter retire and do not pass on the notice to the new trustees, the mortgagee, even though under no obligation to give any further notice (*Re Wasdale* [1899], 1 Ch. 163; 68 L. J. Ch. 117), runs some risk that the new trustees may distribute the property without knowledge of, and therefore without reference to, his claim.

Notice should be given to all the trustees, and also to new trustees.

It follows that a mortgagee should give notice to all the trustees in existence at the date of his mortgage, and if he becomes aware that there has been a change of all the trustees, he should give a further notice to the new trustees in order to prevent them from distributing the property without reference to his claim unless a memorandum of the notice has

(*m*) *Buller* v. *Plunkett* (1860), 1 J. & H. 441; 30 L. J. Ch. 641; *Somerset* v. *Cox* (1865), 33 Beav. 634; 33 L. J. Ch. 490.

(*n*) *Phipps* v. *Lovegrove* (1873), L. R. 16 Eq. 80; 42 L. J. Ch. 892.

been endorsed on the trust instrument pursuant to L. P. Act, 1925, s. 137 (4).

Notice in lieu of *distringas*.

Where the subject of a mortgage is the beneficial interest of the mortgagor in stock in the funds, or stock, shares, or securities in a public company, the mortgagee should give to the Bank of England, or to the company, the notice substituted for a *distringas* by the R. S. C., O. 46. If there are more holdings than one in any one company, or the Bank of England, one notice is sufficient. The stamp is 10s. on each notice.

Stop order, when fund is in court, gives priority.

Where money or securities are in court, the mortgagee should obtain a stop order. An incumbrancer who does not obtain a stop order will be postponed to a subsequent incumbrancer who obtains one, unless the latter had notice of the first incumbrance when he took his security and paid the money. If he had no such notice at that time, the fact that he acquires notice before he obtains the stop order does not deprive him of his priority.(*o*) The carrying over of a fund in court to a separate account does not confer any title or interfere with existing priorities : *Cloutte* v. *Storey* [1911], 1 Ch. 18 ; 80 L. J. Ch. 193.

Intended mortgagee should enquire of trustee, &c., as to prior incumbrances.

Before advancing his money on the security of a thing in action or equitable interest in a property vested in trustees, the intending mortgagee should enquire of the debtor or trustees, and, in case of a policy of assurance, of the assurance office, whether notice has been received of any prior incumbrance. If, however, he neglects to make such enquiry, but gives notice in writing of his own security, he will not, on account of his neglect to enquire, be postponed to a prior incumbrancer who has given no notice, because the enquiry, if made, would not have given him the necessary knowledge. Not only should he make these enquiries, but he should ascertain whether a trust corporation has been appointed for the purposes of L. P. Act, 1925, s. 138, and whether, in default of trustees on a former occasion able to receive notices, any endorsement has been made pursuant to s. 137.

Trustee how far bound to answer enquiries.

A trustee is not bound to answer enquiries made by a person about to advance money to the beneficiary ; if he does answer

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(*o*) *Re Holmes* (1885), 29 Ch. D. 786 ; 55 L. J. Ch. 33 ; *Mutual Life Assce. Soc.* v. *Langley* (1886), 32 Ch. D. 460 ; 53 L. J. Ch. 996 ; *Montefiore* v. *Guedalla* [1903], 2 Ch. 27 ; 72 L. J. Ch. 442 ; see also as to a sub-settlement, *Stephens* v. *Green* [1895], 2 Ch. 148 ; 64 L. J. Ch. 546. As to the practice in obtaining stop orders, see Seton, 6th ed., 491 *et seq.* ; R. S. C. (1883), O. 46 ; *Re Toogood* (1887), W. N. 109.

them honestly to the best of his belief, he is not liable should it turn out afterwards that he has forgotten an incumbrance of which he had received notice, unless he has expressed himself so as to create an estoppel.(*p*) But if the enquiries are made on behalf of the beneficiary, the trustee must answer them, and see L. P. Act, 1925, s. 137.

Effect of bankruptcy on a mortgage of expectant interests.

A mortgagee of an expectant interest in personalty is not affected by the bankruptcy of the mortgagor, unless it falls in before his discharge ; the mortgagee will not lose priority by failure to give notice to the trustee in bankruptcy, but it is safer to give notice in case the interest falls in during the bankruptcy : *Re Lind* [1915], 2 Ch. 345 ; 84 L. J. Ch. 884.

30 & 31 Vict. c. 144.

Notice of assignment of policy of assurance.

The Policies of Assurance Act, 1867, s. 3, provides that no assignment shall confer on the assignee a right to sue for the policy money until a written notice in the form prescribed by the Act is given to the company at their principal place of business, and that the date on which such notice is received shall regulate the priority of all claims under any assignment. This enactment applies only as between the insurance office and the persons interested in the policy, and does not affect the rights of those persons among themselves. Accordingly, where a first incumbrancer on a policy has not given the notice required by the Act, and a second incumbrancer, with notice of the first, has given such notice, the second does not thereby obtain priority : *Newman* v. *N.* (1885), 28 Ch. D. 674 ; 54 L. J. Ch. 598. So a trustee in bankruptcy (who takes subject to all equities) cannot gain priority over an equitable mortgagee for value of the bankrupt's life policy merely by giving prior notice : *Re Wallis* [1902], 1 K. B. 719 ; 71 L. J. K. B. 465.

Sect. XI.—*Transfers of mortgages, sub-mortgages and reconveyances.*

The new and shortened form of transfer (*q*) of a mortgage of any property except a bill of sale, is given in L. P. Act, 1925, 3rd Sch. The effect of the transfer is given in L. P. Act, 1925, s. 114.

A statutory mortgage, including a statutory charge by way of legal mortgage, may be transferred in the manner shown in the 4th Sch. to that Act.

(*p*) *Low* v. *Bouverie* (1891), 3 Ch. 82 ; 60 L. J. Ch. 594 ; *Porter* v. *Moore* [1904], 2 Ch. 367 ; 73 L. J. Ch. 729.

(*q*) L. P. Act, 1925, s. 136, enables the transferee to sue the mortgagor for the debt.

Mortgagor should be made party to transfer.

A person advancing money on the security of a transfer of a mortgage should make the mortgagor a party to the deed, if his concurrence can be obtained, for the purpose of admitting that the mortgage money remains due. It is not usual to join the mortgagor where the transfer is merely to effectuate the appointment or discharge of a trustee. In this case the stamp of 10*s.* does not bring notice of the trust on to the title: L. P. Act, 1925, s. 112.

Effect of transfer without concurrence of mortgagor.

If the mortgagor does not concur, notice of the transfer should be given to him, for if a mortgage is transferred without the privity of the mortgagor, the transferee takes subject to the state of the account between the mortgagor and the original mortgagee and to all equities subsisting between them; payments made by the mortgagor to the original mortgagee after, but without notice of, a transfer are good against the transferee. (*r*)

Costs of transfer.

If a mortgagee transfers a mortgage without the concurrence of the mortgagor and without calling on him to redeem, he cannot add the costs of the transfer to the mortgage debt: *Re Radcliffe* (1856), 22 Beav. 201.

Form of deed where transferee makes a further advance.

If a further sum was at the time of the transfer advanced by the transferee to the mortgagor, it was usual to convey the property free from the old proviso for redemption, and subject to a new one with new covenants for payment, the old mortgage debt being at the same time transferred as a protection against mesne incumbrances (if any). This did not affect the stamp duty, but *ad valorem* duty is payable on the further advance. This transaction is much simplified by taking a transfer in the short form with a charge by way of legal mortgage to cover the aggregate debt.

Transfer of a sub-mortgage.

In a transfer of a sub-mortgage, first there was an assignment of the sub-mortgage debt to the transferee absolutely, secondly an assignment of the principal mortgage debt, subject to redemption on payment of the sub-mortgage debt, and thirdly a conveyance of the mortgaged property or the mortgage term created by the sub-mortgage or the benefit of the legal charge, subject to redemption under the principal mortgage, and subject to redemption by the sub-mortgagor on payment of the

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(*r*) *Dixon* v. *Winch* [1900], 1 Ch. 742; 69 L. J. Ch. 465; *Turner* v. *Smith* [1901], 1 Ch. 213; 70 L. J. Ch. 144; *De Lisle* v. *Union Bank of Scotland* [1914], 1 Ch. 22; 83 L. J. Ch. 166; *Sun Bldg. Soc.* v. *Western, &c., Bldg. Soc.* [1920], 2 Ch. 144; 89 L. J. Ch. 492, not affected by the appeal in 1921, 2 Ch. 438.

sub-mortgage debt. This transaction again can be much simplified by the aid of the new forms.

Sub-mortgages.

If the principal mortgage consists of a charge by way of legal mortgage, a sub-mortgage thereof must necessarily take the form of a transfer. If the principal mortgage consists of a mortgage by demise or sub-demise, a sub-mortgage thereof will take the form of a sub-demise. On a sale the sub-mortgagee will be able to convey the fee simple or the head term affected by the principal mortgage as if he were the principal mortgagee, and the mortgage terms will be extinguished : L. P. Act, 1925, ss. 88 (5), 89 (5). He will be in a similar position to a principal mortgagee in regard to foreclosure and title under the Lim. Act : *ib.*

Statutory forms.

The statutory short forms applicable only to freeholds and leaseholds are now regulated by L. P. Act, 1925, ss. 117-20 ; the forms are set out in the 4th Sch. The ordinary form of transfer (3rd Sch., Form No. 1) now runs on the same lines as the form available for statutory mortgages, hence the difficulty disclosed in *Re Beachey* [1904], 1 Ch. 68; 73 L. J. Ch. 68, is not likely to be encountered in practice.

Mortgagor entitled to a reconveyance on payment of mortgage debt.

Upon payment of principal, interest, and costs, the mortgagor is entitled to a re-conveyance or surrender at his own expense of the mortgaged property,(*s*) and if the mortgagee refuses to re-convey or surrender, the court can appoint a Master to do so on his behalf : *Holme* v. *Fieldsend* [1911], 55 Sol. J. 552. On a death after 1925, all mortgage terms and estates of the mortgagee will pass to his personal representatives : Ad. of E. Act, 1925, Pt. I, which in this respect takes the place of Conv. Act, 1881, s. 30.

Devolution of mortgage estates.

Vesting order in case of lunatic mortgagee.

Where a mortgagee who is not a trustee becomes a lunatic, or defective, a vesting order, or an order appointing a person to convey, must be obtained in lunacy. If he is a trustee the order will be obtained from the High Court, save where under T. Act, 1925, s. 54, concurrent jurisdiction is given to both courts.

Cesser of mortgage terms.

Unless a mortgage term is kept alive by transfer or otherwise, it becomes a satisfied term after the money secured thereby has been paid off and ceases : L. P. Act, 1925, s. 116. This will prevent such terms being improperly kept on foot.

Because a mortgagee does not possess a mortgage term it does not follow that he cannot convey the fee simple or the head term

(*s*) *Rourke* v. *Robinson* [1911], 1 Ch. 480 ; 80 L. J. Ch. 295 ; *Webbe* v. *Crosse* [1912], 1 Ch. 323 ; 81 L. J. Ch. 259, where a vesting order was necessary.

affected by his mortgage. Indeed all chargees by way of legal mortgage are in that position. Again, if a mortgage is paid off but no endorsed receipt or surrender is taken and the deeds are left with the mortgagee, there is nothing to prevent the mortgagee making a title to a purchaser in good faith under L. P. Act, 1925, s. 104.

Surrenders and reconveyances by endorsed receipts.

After 1925 mortgages of all classes of property can be reconveyed or surrendered by an endorsed receipt: L. P. Act, 1925, s. 115, save that this section does not apply where the title to the land is registered under the L. R. Act, 1925.

To comply with the section it is essential that the receipt should—

(*a*) state the name of the person who pays the money;
(*b*) be executed by the chargee by way of legal mortgage (if there is one) or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the money.

May operate as a transfer.

If the money appears by the receipt to have been paid by a person who is not entitled to the immediate right of redemption it will operate as a transfer unless—

(*a*) it is otherwise provided, or
(*b*) it is paid off out of money properly applicable for its discharge and it is not stated that the receipt is to operate as a transfer.

This will not authorise a mortgagor to keep the debt alive so as to prejudice the subsequent incumbrancers, nor can the receipt operate as a transfer unless there is a right to keep the debt alive, *e.g.*, on payment by a limited owner out of his own money.

Stamp duty.

It is liable to the same stamp duty as a re-conveyance (the rate is the same for transfers) but does not impose that duty on receipts given by building, &c., societies.

Form.

The form, which may be varied, is set out in the 3rd Sch.

Not available for partial releases.

It is not available for part payments or releases of part of the property mortgaged; in the latter case a deed under a 10*s.* stamp is required.

Operation.

Where it does not operate as a transfer, it will either extinguish the mortgage term, if any, or will re-convey the property to the person who immediately before the receipt was entitled to the right of redemption. Save in the case of the discharge of mortgages by unincorporated Building Societies, the practice will be to take the receipt under seal, so as clearly to make s. 69 (implied

authority to pay to solicitor) applicable. As long as execution under seal makes no difference to the stamp it is better to use a seal.

Several mortgage deeds.

If there are two or more mortgage deeds it can be endorsed on one of them, but must either refer to all of them or to the aggregate amount of the money secured.

Mortgagor redeeming may require transfer instead of reconveyance

The L. P. Act, 1925, s. 95, enacts that where a mortgagor is entitled to redeem he shall have power to require the mortgagee, not being a mortgagee who is or has been in possession, instead of re-conveying and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third party, as the mortgagor directs; this right may be enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance, but a requisition of an incumbrancer will prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer will prevail over that of a subsequent incumbrancer, but a mortgagee is not always safe in transferring the mortgage where he has notice of a subsequent incumbrance, without the consent of the incumbrancer: *Re Magneta Time Co.* [1915], 84 L. J. Ch. 814; at any rate it is safer to give notice of the intention to transfer. If the discharge is effected by endorsed receipt under s. 115, it will, in a proper case, operate as a transfer.

Case in which court refused to order a transfer.

Where a tenant for life of the right of redemption had failed to keep down the interest, and the remainderman had taken a transfer of the mortgage and brought an action for foreclosure, the court ordered that, on the tenant for life redeeming, the property should be re-conveyed to him on certain terms, and refused to order a transfer to his nominee under the above enactment, because such transfer would have been inconsistent with those terms: *Alderson* v. *Elgey* (1884), 26 Ch. D. 567.

Merger.

Whether, if a mortgagor acquires an interest paramount to a mortgage made by him (*e.g.*, a perpetual rentcharge, under the vesting provisions of L. P. Act, 1925, 1st Sch.), that merges for the benefit of the mortgagee: *ib.*, s. 185 (making the equitable principles applicable), must, as a rule, depend on whether or not the mortgagor was entitled to keep it alive: *Otter* v. *Lord Vaux* (1856), 6 De G. M. & G. 638; 26 L. J. Ch. 128. In a proper case the protection will remain in force: L. P. Act, 1925, 1st Sch., Pt. II, para. 2.

Sect. XII.—*Mortgages of registered land.*

The provisions primarily relating to mortgages of registered land are contained in the L. R. Act, 1925, ss. 25-36.

Form of charge.

A charge may be created by deed, in any form, provided that it describes the land by reference to the register, or in such manner as will enable the registrar to identify it without reference to any other document : s. 25.

The charge must not (*ib.*) refer to unregistered paramount interests or to an interest which is not (s. 70) an overriding interest.

Provisions which are void.

Provisions in a charge restricting the right of the proprietor of such land to transfer it by registered disposition, or to require the cessation of the charge to be noted on the register, or affecting any registered land or charge, other than that in respect of which the charge is expressly registered, are void : s. 25 (3).

Charge certificate.

The mortgagee will be registered as proprietor of the charge, and obtain a certificate of charge : s. 26, which he may retain or leave with the registrar to be noted up : ss. 63-4. If desired the original charge will be bound up as part of the land certificate, an office copy being retained at the Land Registry.

Land certificate.

Where a charge or mortgage (otherwise than by deposit) is registered, the land certificate must be deposited at the registry, the mortgagee cannot have it : s. 65.

Charges take effect subject to the provisions of the Act respecting good leasehold (s. 10), qualified (ss. 7 and 12), and possessory (ss. 6 and 11) titles : s. 26 (3).

Charges before 1926.

Charges registered before 1926 take effect by demise (L. P. Act, 1925, 1st Sch., Pt. VII), or sub-demise (*ib.*, Pt. VIII), and the fee simple or head term vests in the registered proprietor of the land : s. 27 (4), as the person entitled to the right of redemption.

Charges after 1925.

Charges registered after 1925, unless expressly made by demise or sub-demise, take effect (s. 27 (1)) as charges by way of legal mortgage (L. P. Act, 1925, s. 87), from the date of delivery of the deed, but subject to adverse interests noted on the register before the registration of the charge. If necessary a priority notice can be obtained (s. 144 (1) (xxiii)) for securing priority of registration of the charge, but this will seldom be required in practice. Registrations are effected according to dates of applications.

Implied covenants.

The usual covenants in mortgages are implied in registered charges : s. 28.

Priorities.

As in the case of puisne mortgages of unregistered land, registered charges will, unless otherwise stated on the register, rank according to date of registration : s. 29.

Sale, &c., by mortgagee.

On a sale by the mortgagee the certificate of charge will be cancelled and a new land certificate will be issued to the purchaser : s. 64 ; this section also applies on foreclosure or where title is acquired by possession.

Protection of charge for securing a further advance.

Where a charge is made for securing further advances the registrar will give notice to the mortgagee of the intention to make an entry which might operate to postpone or defeat further advances. The mortgagee will be indemnified against loss caused through postal delay or failure on the part of the registrar to give proper notice : s. 30.

Alteration of charges.

Charges may be altered by deed with the consent of all proprietors who would be affected : s. 31 ; and the alteration must be noted on the register.

Effect of a charge registered in the names of two or more persons.

A charge registered in the names of two or more persons will be held by them as joint tenants ; the last survivor may give valid receipts for the mortgage money notwithstanding that the debt may be held in undivided shares : s. 32.

Transfer of a registered charge.

Under s. 33 a transferee for value of a charge will not be affected by its invalidity if he had no notice of the defect. His title is guaranteed.

Powers of mortgagees.

Under s. 34 the proprietor of a charge will, subject to any entry on the register, have the same powers as a legal mortgagee. That section also makes provision for the effect of sales, foreclosures and the acquisition of title by possession.

Discharges.

Provision is made by s. 35 for the effect of the whole or partial release of registered charges, and for the cancellation thereof on the register.

Assimilations to the position of mortgagees of unregisterd land.

After 1925 proprietors of charges will be in substantially the same position as legal mortgagees of unregistered land, and in addition obtain a guarantee of title : ss. 83-85.

All need for special restrictions for the protection of a mortgagee or for conveyances of a legal estate off the register, were that possible (s. 39), has gone, and the charge can, subject to the restrictions of the general law, take in effect any form which can be reasonably required. As a general rule if the mortgage is taken in a form applicable to unregistered land (*e.g.*, in the case of mortgages to Building Societies) it should be headed as in Form No. 19 in the Rules.

Mortgages protected on the register.

Another form of security is authorised by s. 106 ; this security is designed to meet the case where the advance is of a temporary nature and a mortgage by deposit is not deemed sufficient ; but having regard to the *ad valorem* fees charged for the caution in a specially prescribed form, this class of security is not likely to come into general use, save where, for some special reason, it is expedient (sub-s. 5) to refer in the mortgage to an unregistered interest which has priority to the mortgage.

Mortgages and sub-mortgages by deposit.

Power is given by s. 65 to create mortgages by deposit of the land or charge certificate. These can be protected on the register by a notice (fee 1*s.*) : s. 114 (1) (xi).

Sect. XIII.—*Stamps.*

Stamps on mortgages.

By the Stamp Act, 1891, First Schedule, the following duties are imposed, viz. :—

Mortgage, Bond, Debenture, Covenant (except a marketable security otherwise specially charged with duty), and Warrant of Attorney to confess and enter up judgment ;

	£	*s.*	*d.*
(1) Being the only or principal or primary security other than an equitable mortgage) for—			
The payment or repayment of money not exceeding £10	0	0	3
Exceeding £10 and not exceeding £25	0	0	8
„ 25 „ 50	0	1	3
„ 50 „ 100	0	2	6
„ 100 „ 150	0	3	9
„ 150 „ 200	0	5	0
„ 200 „ 250	0	6	3
„ 250 „ 300	0	7	6
„ 300			
For every £100, and also for any fractional part of £100, of the amount secured	0	2	6
(2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose when the principal or primary security is duly stamped ;			
For every £100, and also for any fractional part of £100, of the amount secured	0	0	6

By the Revenue Act, 1903, s. 7, the whole amount of duty payable under this paragraph is not to exceed 10*s.* The section is not retrospective.(*t*)

(*t*) *Suffield* v. *I. R. C.* [1908], 1 K. B. 865 ; 77 L. J. K. B. 746. The stamp duties on transfers of marketable securities were not doubled by Fin. (1909-10) Act, 1910, s. 73 ; but the stamp on the securities themselves

	£	s.	d.
(3) Being an equitable mortgage; For every £100, and any fractional part of £100, of the amount secured	0	1	0
(4) TRANSFER, ASSIGNMENT, DISPOSITION, OR ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment;			
For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear	0	0	6
And also where any further money is added to the money already secured	The same duty as a principal security for such further money		
(5) RECONVEYANCE, RELEASE, DISCHARGE,(*u*) SURRENDER, RE-SURRENDER, WARRANT TO VACATE, OR RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured;			
For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured	0	0	6

Sections 86 to 88 of the Act are also material in connexion with stamps on mortgages.

Fine for not stamping mortgage, transfer or reconveyance

Under s. 15 of the Act, (*v*) the person liable to pay the fine for not stamping a deed is, in the case of a mortgage, the mortgagee, and in the case of a transfer of a mortgage or a re-conveyance, the transferee or the person redeeming the security.

Stamp on transfer of trust mortgages.

Where on the discharge of a trustee or the appointment of new trustees a mortgage for more than £2,000 (*i.e.*, exceeding a 10*s.* *ad valorem* stamp) is transferred under a 10*s.* stamp; purchasers dealing with the transferee are not fixed with notice of the trust: L. P. Act, 1925, s. 112 (reproducing Conv. Act, 1911,

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transferable by delivery is (with the exception of foreign and colonial share certificates) doubled: s. 76. By the Fin. Act, 1911, s. 13, the stamp duty charged on marketable securities, transferable by delivery, other than colonial government securities, was reduced in a few cases, and certain other alterations were made. By the Fin. Act, 1920, ss. 36 and 38, all stamp duties payable on the transfer of marketable securities, other than those defined as such by the Stamp Act, 1891, s. 82, have been doubled; see also Highmore, 4th ed., 154, 155, 223 and 224.

Discharge.

(*u*) An acknowledgment endorsed on a trust deed that all debenture stock thereby secured had been "redeemed, paid off, and satisfied" is not a "discharge" within the schedule: *Firth & Sons* v. *I. R. C.* [1904], 2 K. B. 205; 73 L. J. K. B. 632. A partial release only carries a 10*s.* stamp.

Partial release.

Endorsed receipts.

Endorsed receipts within L. P. Act, 1925, s. 115, come under this heading.

(*v*) This section has been amended by Fin. Act, 1895, ss. 15 and 19; there is no longer any restriction on the time within which the penalty may be remitted.

s. 13) but the stamp must be adjudicated ; see also s. 113, which enables trusts, when disclosed, to be ignored.

Mortgages to building societies.

The Building Societies Act, 1836, is repealed by the B. S. Act, 1894, s. 25 (2), as to all societies certified thereunder after 1856, as from the 25th August, 1896.

Societies incorporated under the B. S. Act, 1874, are not exempt from stamp duty on mortgages : s. 41. The Act of 1874 also repealed the B. S. Act, 1836, except as to then subsisting societies, until they were incorporated under the Act of 1874 : s. 7. But the exemption under s. 41 from stamp duty applies to reconveyances, which are authorised by s. 42 ; nor does it make any difference that the trustees join in a reconveyance for purposes of dissolution.(*w*)

Under L. P. Act, 1925, s. 115 (9), the exemption from stamp duty is maintained, but the operation and form of the endorsed receipt is varied, though the Registrar of Building Societies contends that the form is unaffected.

Small Dwellings Acquisition Acts.

By the Fourth Schedule to the Housing, Town Planning Act, 1919, an endorsed form of receipt is prescribed for mortgages made under the Small Dwellings Acquisition Acts ; this endorsed receipt is free from stamp duty. It is conceived that s. 115 does not affect the exemption, the prescribed form complies with the requirements of that section.

(*w*) Highmore, 4th ed., 338 ; *Old Battersea, &c.* v. *I. R. C.* [1898], 2 Q. B. 294 ; 67 L. J. Q. B. 696.

DIVISION I.

MORTGAGES AND INSTRUMENTS RELATING TO MORTGAGES.

PART I.

LIST OF FORMS IN MORTGAGES, &c.

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No. 1.

Recital of seisin of Borrower.

THE Borrower is solely seised in fee simple in possession free from incumbrances of the freehold property hereinafter described:

No. 1A.

Recital of a Mortgage in a Transfer.

(i) Freeholds.

THIS Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated ——, and made between, &c., whereby in consideration of the sum of £—— [the Borrower conveyed] [*or if the Borrower is not a party*] certain freehold property known as the —— Estate, in the County of —— [was conveyed] to the [*original Mortgagees*] in fee simple by way of mortgage for securing payment to them [on a joint account] of the principal sum of £——, with interest thereon at the rate of £— per cent. per annum, which property by virtue of the Law of Property

Act, 1925, became vested in —— [*the Transferors*] for a term of 3,000 years without impeachment of waste subject to cesser on redemption under the Principal Deed, and the fee simple therein became vested (subject to the said term [and to any subsequent incumbrance]) in the —— [*Borrower*] [*or if the mortgage was made after* 1925, This Deed is supplemental to a Legal Charge (hereinafter called the Principal Deed), dated ——, and made, &c., whereby, in consideration of the sum of £——, the —— [*Borrower*] charged by way of legal mortgage certain freehold property at —— and certain enfranchised land at —— (formerly copyhold of the Manor of ——, subject to the rights of the lord and to the manorial incidents affecting the same, *or*, subject to the rights of the lord and to a compensation terminable yearly rentcharge of £——) and certain leasehold property at —— held for a term of —— years from —— under the Lease mentioned in the Principal Deed at a yearly rent of £——, with the payment to —— [*Mortgagees*] of the principal sum of £——, with interest thereon at the rate of £— per cent. per annum] [*or in the case of enfranchised land*, the Borrower covenanted to surrender to the use of the [*original Mortgagees*] and their heirs certain property, then copyhold of the Manor of ——, subject to a condition for making void such surrender on payment on a day therein mentioned of a sum of £—— and interest thereon at the rate of £— per cent. per annum, *or*, subject to a condition for making void such surrender corresponding to the proviso for redemption relating to the said freehold property, which property by virtue of the Law of Property Acts, 1922, 1924 and 1925, became (subject to the lord's rights and to the manorial incidents) vested in —— [*the Transferors*] for a term of 3,000 years, &c. (*continue as above recited in regard to the freeholds*)] [*or in the case of Leaseholds*, the Borrower demised certain leasehold property at —— comprised in the Lease recited in the Principal Deed to the [*original Mortgagees*] for the residue of the term of —— years from the ——, created by the said Lease, except the last —— days of the said term, by way of mortgage for securing payment to them of the principal sum of £——, with interest thereon at the rate of £— per cent. per annum] (*a*):

Variation if mortgage made after 1925.

(ii) Enfranchised land, where mortgage made before 1926.

(iii) Leaseholds by sub-demise.

(*a*) After 1925 powers of attorney and other provisions for getting in the head term can be ignored, for, save where part only of the land comprised in the lease is mortgaged and the rent is not legally apportioned, the mortgagee can, when realising, convey or get in the head term: L. P. Act, 1925, s. 89. In the special case mentioned, the power of attorney is material, and see *ib.*, s. 128,

Powers of Attorney.

No. 1B. Recital of a sub-mortgage (to follow recital of the "principal mortgage").

BY a Deed (hereinafter called the Sub-Mortgage) dated —— and made, &c., the said principal mortgage debt of £—— was assigned to —— [*sub-Mortgagee*] subject to redemption on payment to him by —— [*the principal Mortgagee being the sub-Mortgagor*] of the sum of £—— [*the amount advanced on the sub-Mortgage*] and interest thereon as therein mentioned and the properties comprised in the mortgage term created by [the Law of Property Act, 1925, and taking effect under] the principal mortgage were sub-demised by —— [*the sub-Mortgagor*] (subject to the right of redemption subsisting under the principal mortgage) unto —— [*sub-Mortgagee*] for a term less by one day than the principal mortgage term by way of mortgage for securing payment to him of the principal sum of £—— [*sub-mortgage debt*] and interest thereon as therein mentioned [*or, where the principal mortgage is a legal charge*, and the benefit of the charge created by the principal mortgage on properties at —— was conveyed and transferred by —— (*the sub-Mortgagor*) unto —— (*the sub-Mortgagee*) by way of mortgage for, &c. (*continue as above*)].

Variation where the principal mortgage is a legal charge.

No. 1C. Recital of joint seisin.

THE Borrowers are beneficially seised in fee simple, free from incumbrances, of the freehold property hereinafter described, and hold the same on trust for sale, and the net proceeds in trust for themselves as joint tenants (*aa*):

No. 2. Recital of a transfer of a mortgage.

BY a Transfer dated ——, and made between, &c., the said mortgage debt of £——, with the interest thereon, was assigned to the [*Transferees*] absolutely, and the freehold properties

(i) Freeholds.

as to powers of attorney given to a purchaser or mortgagee and the persons deriving title under him. Where it is desired to make the deed supplemental to several documents the recital will run thus:—

Recital where deed is supplemental to several documents.

THIS Deed is supplemental to the following Deeds; namely [*or*, to the several Deeds mentioned in the —— Schedule hereto], First, a Mortgage, &c. (*as in text*); Secondly, a Further Charge, dated, &c. (whereby the said properties were charged with the payment to the said —— of the further sum of £—— and interest at the rate aforesaid); And, thirdly, a Transfer, dated, &c. (whereby the aggregate principal sum of £—— secured by the Principal Deed and Further Charge and the interest thereon were assigned to —— and the said properties were assigned to —— for the residue of the said mortgage terms, subject to cesser on redemption under the Principal Deed and Further Charge).

Implied trust for sale.

Directions of beneficiaries.

(*aa*) For the implied trust for sale: L. P. Act, 1925, s. 36. As to giving effect to the directions of the beneficiaries: *ib.* ss. 3 (1) (ii), 26 (3); for the meaning of equitable interests: ss. 1 (3) (8), 4, 205 (1) (x).

comprised in the Principal Deed were conveyed to —— [*the Transferees*] in fee simple, subject to the right of redemption subsisting therein under the Principal Deed **[***or in the case of enfranchised land*, and the [*Transferors*] assigned to the [*Transferees*] the benefit of the covenant to surrender the property then copyhold of the Manor of —— mentioned in the Principal Deed, subject to the right of redemption subsisting therein**]** (*b*) **[***or in the case of leaseholds*, and the [*Transferors*] assigned to the [*Transferees*] the property comprised in the Lease (recited in the Principal Deed) for the residue of the term of —— years from the —— day of ——, 19—, less the last —— days created by the Principal Deed, subject to the right of redemption subsisting under that Deed, together with the benefit of the declaration of trust of the head term contained in the Principal Deed [(*c*) and the [*Transferors*] thereby removed the Borrower from being a trustee of the said head term, and appointed [*a new trustee*] to be a trustee in his place and thereby vested the said head term in the said —— [*new trustee*] which has by virtue of Part II of the First Schedule to the Law of Property Act, 1925, become vested in the Borrower or other person entitled to the ultimate right of redemption, but subject to any subsisting mortgage terms] **]** (*d*):

(ii) Enfranchised land.

(iii) Leaseholds.

No. 2A.

Agreement for advance.

THE Mortgagees have agreed to advance to the Borrower the sum of £—— (out of money belonging to them on a joint account (*e*)) upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

No. 2B.

The like in a further charge where further security is given.

(*As in last form, saying*, the further sum of £—— *and adding at end*); and also upon having the said sum of £—— due under the Principal Deed and the interest thereon further secured as hereinafter appearing:

Variation if there has been a conditional surrender.

(*b*) If the borrower had surrendered to the use of the original mortgagees, then in the transfer they would have covenanted that they would be admitted, and afterwards surrender to the use of the transferees and their heirs.

(*c*) This will only be added to the recital where such an appointment is made. After 1925 no power of attorney is required for getting in the head term on realisation, save where part of the land comprised in a lease is mortgaged without the rent being apportioned; except in this case the mortgagee can on a sale convey, or on foreclosure or on acquiring title by possession, can acquire the head term: L. P. Act, 1925, s. 89.

(*d*) Being a bare trustee the head term will vest in the owner of the ultimate right of redemption; each mortgagee of leaseholds can only take a sub-term or a charge by way of legal mortgage.

(*e*) No joint account clause is required: L. P. Act, 1925, s. 111.

No. 2c. The like in a transfer where there is a further advance.

THE [*Transferees*] have agreed at the request of the Borrower to pay to the said [*Transferors*] the said sum of £—— and to advance to the Borrower the further sum of £—— upon having the payment of the aggregate sum of £——, with interest as hereinafter mentioned, secured in manner hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:—

No. 3. Preliminary clause; consideration.

No. 4. Covenant for payment of principal.

THE Borrower hereby covenants with the Mortgagee[s] (*f*) to pay to him [them] on the —— day of —— next [*generally six months from date of deed*] the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum [*or* with interest thereon from the date hereof at such a rate as after deducting income tax therefrom at the current rate will amount to interest at the net rate of £— per cent. per annum free of tax (*g*)]

No. 5. Further advances. (*h*)

[*In case of further advances add:*

AND ALSO on whichever of the half-yearly days hereby fixed for payment of interest shall happen next after any further money shall be advanced by or become due (other than for

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Persons deriving title under the covenantor omitted. Survivorship. Covenants with each covenantee implied. Successors of covenantee omitted.

(*f*) The real and personal estate of the covenantor is bound by his covenant: L. P. Act, 1925, s. 80; covenants made with two or more covenantees devolve for the benefit of the survivors or other person entitled to sue, and where made after 1925 are construed as being also made with each of them: *ib.*, s. 81. After 1925 the assigns of a covenantor need not be mentioned, even in the case of real covenants: *ib.*, s. 79, or where the subject-matter is not in existence when the covenant is made: *ib.*

A covenant relating to any land of the covenantee has effect as if made with him and his successors in title, thus the words "executors, administrators and assigns" of the covenantee are wholly unnecessary after 1925: *ib.*, s. 78, and the benefit runs with the land without the use of any technical expression: *ib.*, s. 80 (2), if the covenant is such that the benefit could have been made to run with the land: *ib.* The assign of a personal covenant can sue on it: *ib.*, s. 136, and see *Re Westerton* [1919], 2 Ch. 104; 88 L. J. Ch. 392.

Interest free of tax.

(*g*) As to interest free of tax, see *Brooke* v. *Price* [1917], A. C. 115; 86 L. J. Ch. 329; *Burroughes* v. *Abbott* [1922], 1 Ch. 86; 91 L. J. Ch. 157 (order for alimony or maintenance); *Re Gretton* [1923], 1 Ch. 77; 92 L. J. Ch. 49 (annuity under compromise deed).

Further advances.

(*h*) As to when further advances may be safely made: L. P. Act, 1925, s. 94, over-ruling *West* v. *Williams* [1899], 1 Ch. 132; 68 L. J. Ch. 127, where there is an obligation to make further advances; where the mortgage is made to secure further advances, no notice will be imputed by reason of registration of a land charge or a memorial if the registration was not in force when the original advance was made or the last official certificate of search was obtained: *ib.*, sub-s. 2. Express notice, save where there is an obligation to make the

interest) to the Mortgagee[s] hereunder, to pay to the Mortgagee[s] the amount thereof, with interest thereon at the rate aforesaid from the day of the same being advanced or becoming due ;]

No. 6. and interest.

AND ALSO so long as any principal money remains due hereunder (*i*) after the said —— day of —— next [*or in case of further advances add*, or after the first half-yearly day which happens after the date of the advance] to pay to the Mortgagee[s] interest thereon at the rate aforesaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

No. 7. Joint and several covenants.

THE Borrowers, [hereby jointly and severally covenant] [and as separate covenants, every two and three [*and so on*] (*j*) of them hereby jointly covenant and each of them hereby covenants] with the Mortgagee[s] to pay to the Mortgagee[s] on the —— day of —— next the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, and also so long as, &c. (*continue as in last form*) [*or where there there are only two Borrowers*, The Borrowers hereby jointly and severally covenant with the Mortgagee[s] to pay, &c., *as above*].

No. 8. Demise of freeholds and enfranchised land by way of mortgage

THE Borrower, as Beneficial Owner, hereby demises unto the Mortgagee[s] :

[FIRST] ALL THAT, &c. (*k*) [*parcels of freeholds*] : [And SECONDLY] ALL THAT, &c. [*parcels of enfranchised land, excepting the lord's mineral and sporting rights if they have not been acquired under a compensation agreement, see Forms in Conveyances on Sale, Sec. II, Vol. I, p.* 271] :

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advance, of a subsequent incumbrance, prevents further advances retaining priority, even where the notice is to one of two joint mortgagors : *Freeman* v. *Lang* [1899], 2 Ch. 355 ; 68 L. J. Ch. 586, and see *Re Phillips* [1903], 1 Ch. 183 ; 72 L. J. Ch. 94.

Merger of debt in judgment.

(*i*) A personal covenant to pay interest on the mortgage debt is merged in a judgment recovered by the mortgagee for principal and interest. He cannot then recover interest at a higher rate than 4 p.c. p.a. : *Re European Central Ry. Co.* (1876), 4 Ch. D. 33 ; 46 L. J. Ch. 57 ; *Ex p. Fewings* (1883), 25 Ch. D. 338 ; 53 L. J. Ch. 545 ; *Arbuthnot* v. *Bunsilall* (1890), W. N. 37. But *secus* where there is a distinct covenant to pay interest during the continuance of the security : *Popple* v. *Sylvester* (1882), 22 Ch. D. 98 ; 52 L. J. Ch. 54 ; *Lowry* v. *Williams* [1895], 1 I. R. 274 ; *Economic, &c., Socy.* v. *Usborne* [1902], A. C. 147 ; 71 L. J. P. C. 34.

Arrears of interest.

Under this covenant arrears of interest may be recovered without calling in the principal.

Liability under joint and several covenants.

(*j*) Though a covenant be expressed to be several, or joint and several, a plaintiff may join as parties to the same action all or any of the covenantors : R. S. C., O. 16, r. 6 ; *Lloyd* v. *Dimmack* (1878), 7 Ch. D. 398 ; 47 L. J. Ch. 398.

(*k*) For parcels, see Forms in Conveyances on Sale, Sec. II, Vol. I.

To HOLD unto the Mortgagee[s] for a term of 3,000 years from the date hereof without impeachment of waste [*in the case of enfranchised land add*—subject as to the property secondly hereinbefore described to the manorial incidents and rights of the lord saved by the Law of Property Act, 1922, *or, if a rentcharge has been reserved by a compensation agreement or under a Certificate of the Minister*—subject as to the property secondly hereinbefore described to the compensation rentcharge hereinbefore mentioned; and as to all the property], subject to the proviso for cesser hereinafter contained (that is to say).(*l*)

No. 9.
Proviso for cesser of mortgage terms of freeholds, enfranchised land and leaseholds.

It is hereby provided, that on payment on the —— day of —— next [*the day mentioned in Form No.* 4] [*or in the case of further advances*, at the times hereinbefore fixed for the payment thereof] by the Borrower or the persons deriving title under him to the Mortgagee[s] (*m*) or the persons deriving title under him [them] of the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum:

No. 9A.
Where further advance.

[*In case of further advances add:*

AND ALSO of all other principal money (if any) advanced or to become due under this deed and interest thereon at the rate aforesaid from the day of the same being advanced or becoming due.]

No. 9B.
For cesser or re-assignment, &c.

[THE [term[s] hereby granted shall cease without prejudice to the right of the Borrower and the persons deriving title under him to require a statutory receipt to be endorsed hereon or a surrender to be executed as evidence of such cesser] [and] [the property hereinbefore assigned shall at the request and cost of the Borrower or the persons deriving title under him be duly reassigned to him or them (*n*) by endorsed receipt or otherwise.]]

No. 10.
Charge by way of legal mortgage of freeholds, enfranchised land and leaseholds.

(1) The Borrower, As Beneficial Owner, hereby charges by way of legal mortgage:

ALL, &c. [*Parcels. In the case of leaseholds these will be by reference to the recited lease. In the case of enfranchised land the*

(*l*) For provisoes for cesser or redemption, see next three Forms. As a general rule the mortgage will be taken as a charge by way of legal mortgage, see Form No. 10.

Persons deriving title, &c.

(*m*) Throughout these forms the references to "persons deriving title under" a borrower, mortgagee, &c., should be omitted if a definition is employed to include them, see Form No. 48, *inf.* As to the effect of payment to one of two joint mortgagees, see *Powell* v. *Brodhurst* [1901], 2 Ch. 160; 70 L. J. Ch. 587.

(*n*) A mortgage term will cease when the principal, interests and costs are paid: L. P. Act, 1925, s. 116; but there should be an endorsed receipt in accordance with s. 115, as evidence of the discharge.

lord's sporting and mineral rights should be excepted unless they have been acquired under a compensation agreement.]

[*In the case of a second mortgage add*—but subject to the recited Mortgage [Legal Charge] and the principal money and interest thereby secured. *In the case of enfranchised land, where necessary, add*—but subject to the manorial incidents affecting the premises and saved by the Law of Property Act, 1922. *Or*, but subject to the compensation rentcharge hereinbefore mentioned]:

WITH the payment to the Mortgagee[s] of the principal money, interest and other money hereby covenanted to be paid by the Borrower.

(2) For the purposes of this Charge (*o*) the legal right of redemption ceases on the said —— day of ——, 19— (*six months from date*).

No. 11.

Appointment of Mortgagee[s] as attorney[s] to get in head term. (*p*)

FOR the consideration aforesaid the Borrower hereby irrevocably appoints the Mortgagee[s] and the persons deriving title under him [them] or his [*or* their] substitute or substitutes jointly and severally to be the attorney and attorneys of the Borrower for him, and in his name, or in the name of the estate owner for the time being, and on his behalf, and as his act and deed, or otherwise, to execute and do all or any of the following things, namely :—

(i) On any exercise of the statutory power of sale, to make such assignment to a purchaser thereunder of the head term or leasehold reversion in the property and with the same consequences as if section eighty-nine of Law of Property Act, 1925, were applicable and any exceptions contained in sub-section (6) of that section had not been enacted :

(*o*) As to this, see *Williams* v. *Morgan* [1906], 1 Ch. 804 ; *Teulon* v. *Curtis*, Younge, 610. It cannot be required where there is a proviso for redemption or cesser ; compare L. P. Act, 1925, s. 117 (2), which implies a provision for discharge in the case of statutory mortgages. Legal right of redemption.

(*p*) This power of attorney should only be given where part of the premises comprised in the lease is mortgaged and the rent, if any, has not been legally apportioned, see L. P. Act, 1925, s. 89 (6). The power may be given to the persons deriving title under the mortgagee : *ib.*, s. 128. Power of attorney.

As this power of attorney is merely in aid of and incident to the security, a further 10*s.* stamp is not necessary. An irrevocable power of attorney can be given under L. P. Act, 1925, s. 126. The power being an authority coupled with an interest, even if not expressly made irrevocable, would be irrevocable while any money remains on the security : *Gaussen* v. *Morton* (1830), 10 B. & C. 731 ; *Clerk* v. *Laurie* (1857), 2 H. & N. 200, *per* Williams, J. ; *Bromley* v. *Holland* (1802), 7 Ves., at p. 28 ; *Carmichael's Case* [1896], 2 Ch. 643 ; 65 L. J. Ch. 902 ; and *cf. Frith* v. *F.* [1906], A. C. 254 ; 75 L. J. P. C. 50. Power of attorney, stamp.

(ii) After a foreclosure order absolute, to make such assignments of the head term or leasehold reversion aforesaid as may be required to vest the same in the Mortgagee[s] or the persons deriving title under him [them] in like manner as if that order had applied thereto and with the same consequences as if sub-section (2) of the said section had applied to the security hereby made :

(iii) After acquiring a title under the Limitation Acts, to execute and do all such assignments and things as may be expedient for acquiring the said head term or reversion in like manner as if a vesting deed had been executed pursuant to sub-section (3) of the said section :

(iv) To deal with fixtures and chattels personal in like manner as if sub-section (4) of the said section were applicable to the security hereby made :

(v) At any time after the statutory power of sale has become exercisable, to arrange with the lessor and any other necessary parties for a legal apportionment of the rent reserved by the recited lease to the intent that thenceforth the said section shall apply to the security hereby made.

No. 11A.

Power of attorney to extinguish manorial incidents.

(1) The Borrower hereby irrevocably appoints the Mortgagees and the persons deriving title under them and their respective substitutes jointly and severally to be his attorneys in his name or otherwise, and notwithstanding that the statutory power of sale may not have become exercisable, to do all things necessary or expedient for extinguishing the manorial incidents affecting the property hereby charged or any part thereof and for acquiring from the lord of the manor a release of his mining and sporting rights and a grant of any easements, rights or privileges :

(2) Under this power of attorney—

(i) A compensation agreement may be entered into ;

(ii) Notice to ascertain the amount of the compensation may be served ;

(iii) The compensation may be paid either by a gross sum or by a compensation rentcharge ;

(iv) Rights and interests may be granted over or in respect of minerals or surface in or towards satisfaction of the compensation.

(3) All money advanced for discharging the compensation money (when payable in a gross sum) and the costs and expenses of effecting the extinguishment or otherwise howsoever in connexion with this power of attorney shall be added to the

principal money hereby secured and shall carry interest from the date of advance or expenditure at the rate aforesaid :

(4) The charge by way of legal mortgage hereinbefore contained shall extend and apply to the said principal money and interest :

(5) Any rights or interests acquired may be limited to the Borrower in fee simple, subject to the reservation of a charge by way of legal mortgage term to the Mortgagees or the persons deriving title under them (in accordance with section sixty-five of the Law of Property Act, 1925) for securing the principal money and interest owing on this security.

No. 12. Sub-demise of leaseholds by way of mortgage.

THE Borrower, As Beneficial Owner, hereby demises unto the Mortgagee[s],

ALL the premises comprised in and demised by the recited Lease,

TO HOLD unto the Mortgagee[s] for the residue of the term granted by the said Lease except the last three days thereof,(*q*) but subject to the proviso for cesser hereinafter contained :

(*Add proviso for cesser, Forms Nos.* 9, 9A (*if required*) *and* 9B, *supra.*)(*r*)

No. 13. Appointment of Receiver.

(1) IN consideration of the premises the Borrower with the privity of the Mortgagee[s] hereby appoints the Receiver to be receiver from time to time in the name of the Borrower or otherwise, to receive the rents and profits of the property hereinbefore charged [demised].

Powers of Receiver.

(2) THE Receiver shall (subject to the provision hereinafter

(*q*) As to the position of the mortgagee if the trustee in bankruptcy of the borrower disclaims the lease, see *Re Baker* [1901], 2 K. B. 628 ; 70 L. J. K. B. 856 ; *Re Carter and Ellis* [1905], 1 K. B. 735 ; 74 L. J. K. B. 442 ; *Re Holmes* [1908], 2 K. B. 812 ; 77 L. J. K. B. 1129. The trustee in bankruptcy of a mortgagor of leaseholds, mortgaged by sub-demise, had power to assign the nominal reversion, notwithstanding the declaration of trust of the reversion, which a mortgagor formerly used to make: *Re Caine* (1918), 63 S. J. 136. The official receiver may disclaim : *Re Cohen* [1905], 2 K. B. 704 ; 74 L. J. K. B. 864.

Disclaimer in bankruptcy.

A mortgage by sub-demise for a term commensurate with the term granted by a previous mortgage creates a legal sub-term or interest: *Re Moore* [1912], 2 Ch. 105 ; 81 L. J. Ch. 503 ; see articles in 56 Sol. J. 220, 249. This principle is confirmed and extended by L. P. Act, 1925, s. 149 (5).

Effect of sub-term of equal duration.

A demise passes the possession without actual entry : *ib.*, s. 149 (2), as a bargain and sale formerly did.

Operation of demise.

(*r*) As to mortgages of settled land : S. L. Act, 1925, ss. 49 (1) (*c*) (shifting without consent of incumbrancer), 69 (the like with consent), 70 (variation of provisions of mortgage), 71 (raising of money by charge by way of legal mortgage, or by demise or sub-demise).

Mortgages of settled land.

contained) have, exercise and perform all the like powers and duties, and be entitled to the like remuneration, and be removable, and be deemed the agent of the Borrower in like manner as well before as after the Mortgagee[s] shall have become entitled to exercise the power of sale conferred by the Law of Property Act, 1925, as if the Receiver had been appointed by the Mortgagee[s] pursuant to that Act (*s*) after he [they] had become entitled to exercise the power of sale thereby conferred.

(3) [ANY person paying money to the Receiver shall not be concerned to inquire whether any case has happened to authorise him to act]:

Not to act till interest in arrear, or power to act at once.

(4) PROVIDED that the Receiver shall not exercise any of the powers of a receiver unless and until some half-yearly payment of interest due under this security shall be wholly or partially in arrear for —— days.

[*Or* PROVIDED that the Receiver shall immediately after the execution hereof be entitled to exercise the powers of a Receiver, and on his death or removal the Mortgagee[s] shall be deemed to have power to appoint a Receiver within the meaning of the said Act.] (*t*)

No. 14.

Power to appoint a Receiver extended to the appointment of a manager.(*u*)

THE provisions of the Law of Property Act, 1925, as to the appointment of a receiver by mortgagees shall be and they are hereby extended so as to authorise any receiver appointed under the said provisions, if so directed in writing by the Mortgagee[s], or the persons deriving title under him [them], to manage and carry on the business for the time being carried on upon the property hereby charged [*or* demised] in such manner as he may think fit; and any money expended by such Receiver or by the Mortgagee[s] or the persons deriving title under him [them]

Powers of leasing and accepting surrenders.

(*s*) See L. P. Act, 1925, ss. 101, 109. If a receiver is appointed under the Act, then the statutory powers of leasing and accepting surrenders become exercisable by the mortgagees if the mortgage is made after 1911: ss. 99, 100. The ultimate balance of the money received can be applied in discharging the principal money if the mortgagee so directs in writing: s. 109 (8) (*r*).

Receiver.

(*t*) After the death of the mortgagor, the receiver becomes the agent of his personal representative to the extent of the assets: *Re Hale* [1899], 2 Ch. 107; 68 L. J. Ch. 517. The receiver's authority is necessary before the borrower can distrain for rent: *Woolston* v. *Ross* [1900], 1 Ch. 788; 69 L. J. Ch. 363. As to receivers generally, see *Robinson Printing Co.* v. *Chic* [1905], 2 Ch. 123; 74 L. J. Ch. 399. As to the power for a mortgagee of a share in the proceeds of sale of land held on trust for sale to appoint a receiver: L. P. Act, 1925, s. 102.

Manager.

(*u*) See L. P. Act, 1925, s. 101 (1) (iii), (3); *Rutter* v. *Everett* [1895], 2 Ch. 872; 64 L. J. Ch. 845; *Re Hale*, cited last note. As to the appointment of a manager by the Court, see *Whitley* v. *Challis* [1892], 1 Ch. 64; 61 L. J. Ch.

in carrying on the same, with interest thereon from the date of expenditure at the rate of £— per cent. per annum, shall be a charge upon the property hereby charged [*or* demised].

No. 15.

Provision in mortgage of an undivided share in the proceeds of land.(*v*)

PROVIDED, that the Mortgagee[s] or the persons deriving title under him [them] may exercise the powers conferred by section one hundred and two of the Law of Property Act, 1925, and all other powers in respect of the undivided share of the property hereby assigned, either alone or in conjunction with the persons entitled to the other undivided shares, and may also from time to time during the continuance of this security concur with the trustees for sale and any other persons as aforesaid in making a partition of the lands held on trust for sale or any of them, and may give or receive money for equality of partition, and any money so given, together with all expenses incurred by [him or] them in or about such partition, shall be added to the principal money hereby secured and carry interest at the same rate, and the net money so received (after payment of expenses) shall be applied towards payment of the principal money hereby secured.

No. 16.

Attornment clause to be used where Borrower is in occupation.

(1) THE Borrower hereby attorns tenant to the Mortgagee[s] of the property hereby charged [*or* demised] [*or* of such of the properties hereby charged as are stated in the —— Schedule hereto to be in the occupation of the Borrower] at the yearly rent of 6*d.*, if demanded:

(2) PROVIDED as follows:—

(i) That the Mortgagee[s] or the persons deriving title under him [them] may at any time after the —— day of —— next (*day fixed for redemption*), and provided that some or one of the events mentioned in section one hundred and three of the Law of Property Act, 1925, shall have occurred, enter into and upon the said properties or any part thereof and determine the tenancy hereby created after giving to the Borrower at least three days' notice to quit [*or*, without giving to the Borrower any notice to quit]:

307; *Gloucester County Bk.* v. *Rudry, &c., Co.* [1895], 1 Ch. 629; 64 L. J. Ch. 451. The goodwill of the business should, of course, be assigned in the mortgage.

Partitions.

Power for second mortgagee to take possession not required.

(*v*) For the power for trustees for sale to partition: L. P. Act, 1925, s. 28; there cannot be any undivided shares in land: *ib.*, First Sch., Pt. IV. In former editions a power was given for second and subsequent mortgagees to take possession, see L. Q. R., 1908, pp. 297—300; this was never required in a mortgage by demise or sub-demise, nor will it be necessary in the case of legal charges, for the chargee is in the same position as if he had a term: L. P. Act, 1925, s. 87, 5th Sch., Form No. 1, footnote.

(ii) The Borrower hereby irrevocably appoints the Mortgagee[s] and the persons deriving title under him [them] or his or their substitutes jointly and severally to be his attorneys to enter an appearance on his behalf in any proceedings for ejectment and consent to any judgment or order (whether or not made in a summary way) giving to him or them the possession of any such property :

(iii) That the Mortgagee[s] shall not under the provisions of this clause be deemed to be [a] Mortgagee[s] in possession of the properties hereby charged [*or* demised] or become accountable for the rents and profits thereof until actual possession is taken.(*w*)

No. 17.

Covenant that no person shall be registered as proprietor. (*x*)

(1) THE Borrower hereby covenants with the Mortgagee[s] that so long as any money remains owing on the security hereof no persons shall, without the consent in writing of the Mortgagee[s] or the persons deriving title under him [them], be registered as proprietors under the Land Registration Act, 1925, of the property hereby charged [*or* demised] or of any part thereof.

Attornments.

(*w*) As to attornments : L. P. Act, 1925, s. 151. This attornment clause creates the relationship of landlord and tenant, and the mortgagees may under the right to enter on default obtain a summary judgment for the recovery of the land under O. 3, r. 6 (i), see notes thereto in Annual Practice, also *Hall* v. *Comfort* (1886), 18 Q. B. D. 11 ; *Kemp* v. *Lester* [1896], 2 Q. B. 162. As the mortgage is not registered as a bill of sale, the clause does not enable the mortgagees to distrain for rent : Bills of Sale Act, 1878, s. 6. The rent reserved should be nominal.

Legal chargees.

Though a legal chargee does not actually have a term in the land : L. P. Act, 1925, s. 87, he has the same powers and remedies, including the right to take proceedings to obtain possession as if he had a legal term : *ib.*, he is in the same position as if there had been a demise or sub-demise : footnote to Form No. 1 in 5th Sch. to L. P. Act, 1925 ; the charge is a legal interest having the effect of a legal estate : *ib.*, s. 1 (2) (*c*), hence the attornment is valid.

Rent Restriction Acts.

Section 12 (4) (*c*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shows that the Act does not apply to mortgages made after 1st July, 1920.

Though an attornment clause creates the relationship of landlord and tenant, it is only for the purpose of enabling the mortgagee to obtain possession for the purposes of his security.

Where the rent, as in an attornment clause, is less than two-thirds of the rateable value, the tenancy must, for the purpose of the Act, be regarded as if it had never existed : *ib.*, s. 12 (7) ; *Jenkinson* v. *Wright* [1924], 2 K. B. 645 ; 94 L. J. K. B. 17.

In *Woodifield* v. *Bond* [1921], W. N. 309, the mortgage was made before July, 1920, hence the Act was held to apply for the benefit of the mortgagor.

As to covenant against registration.

(*x*) Having regard to the provisions of L. R. Act, 1925, s. 110 (5), *semble* every mortgage of unregistered land capable of registration under the Act, whether in a compulsory district or not, should in strictness contain this covenant. Otherwise the mortgagees, unless the mortgage is registered as a

(2) SUCH consent may be given on the terms that a charge be registered for giving effect to the security hereby made.

No. 18.

Covenant to repair and insure against fire.(*y*)

(1) THE Borrower hereby covenants with the Mortgagee[s] that so long as any money remains due under this security the Borrower or the persons deriving title under him—

(i) Will repair and keep in good repair all buildings on the property, and will insure and keep insured all buildings upon the property hereby charged [*or* demised] against loss or damage by fire [in the joint names of the Borrower and the Mortgagee[s]], in at least the sum of £—— [*or*, a sum equal to three-fourth parts of the amount required to rebuild the same in case of total destruction (*z*)] ;

(ii) Will pay every sum from time to time payable for keeping on foot every such insurance within seven days after the first day on which it becomes payable ;

(iii) Will forthwith deliver [*or* will from time to time when required produce (*a*)] to the Mortgagee[s] the policy or policies of insurance [or other proper evidence of the subsistence thereof] ;

(iv) Will when required deliver to him [them] the receipt for [or other sufficient evidence of payment of] every sum payable as aforesaid ;

(v) Provided that in default the Borrower permit the Mortgagee[s] to enter on the property and effect repairs and will repay to the Mortgagee[s] or the persons deriving title under him [them] every sum expended in effecting repairs or which under the statutory power for the purpose may be expended by [him or] them in keeping the said buildings insured to the amount

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charge, may find themselves hampered in exercising their power of sale by the registration of the owner of the fee simple or the head term : L. R. Act, 1925, s. 110 ; *cf. Re Voss* [1911], 1 Ch. 42 ; 80 L. J. Ch. 33. If the covenant in the text is broken, the statutory power of sale becomes immediately exercisable : L. P. Act, 1925, s. 103 (iii).

Insurance.

(*y*) Under L. P. Act, 1925, s. 108, all money received on an insurance effected under the mortgage deed or the Act is in the absence of provision to the contrary to be applied in restoration of the premises, or can, if the occasion has arisen, at the option of the mortgagee, be applied in or towards discharge of the mortgage debt, and see *Sinnott* v. *Bowden* [1912], 2 Ch. 414 ; 81 L. J. Ch. 832. Under s. 88 (3) of the Stamp Act, 1891, the *ad valorem* stamp is not affected by this covenant : Highmore, 4th ed., 248-9.

(*z*) If there are separate buildings the insurers require separate policies. Where there is an existing insurance at the date of the mortgage, the policy, if in the custody of the borrower, should be handed over to the mortgagees with an indorsement by the insurers on it that the mortgagees are interested jointly with the borrower.

(*a*) The policy and receipts may have to be delivered to a prior mortgagee or someone else.

aforesaid, with interest thereon and on any money expended on repairs at the [maximum] rate aforesaid from the time of each payment ;(*b*)

Covenant to satisfy statutory right.

(2) THE covenant as to insurance hereinbefore contained shall so long as the same is duly performed be in satisfaction of the statutory right of the Mortgagee[s] or the persons deriving title under him [them] to effect and keep on foot fire insurances.

[(3) THE foregoing covenant and the statutory provisions as to insurance shall also extend and apply to such insurances against bombardment, civil commotion and other risks as the Mortgagee[s] or the persons deriving title under him [them] shall from time to time in writing require to be covered.]

No. 19.

Covenant by Borrower to keep up guarantee policy.(*c*)

THE Borrower hereby covenants with the Mortgagee[s] that so long as any money remains due under this security the Borrower or the persons deriving title under him—

(i) Will pay every sum from time to time payable for keeping on foot the said guarantee policy effected with the —— Insurance Company [*or*, insurers at Lloyds] within seven days after the first day on which it becomes payable ;

(ii) Will, when required, deliver the receipt for every such payment to the Mortgagee[s] :

PROVIDED that in default the Mortgagee[s] or the persons deriving title under him [them] may pay every such sum and also every sum payable for effecting and keeping on foot any other guarantee policies either in the same or any other office or with other insurers in substitution for the said policy (which other policies are in case of default as aforesaid hereby authorised to be effected at the discretion of the Mortgagee[s]) ;

(iii) Will repay to the Mortgagee[s] or the persons deriving title under him [them] all sums so paid and all costs and expenses incurred in effecting any new policies or otherwise in relation to the premises, with interest thereon at the rate of £— per cent. per annum from the time of each payment :

PROVIDED that until repayment the property hereinbefore charged [*or* demised] and every new policy to be effected as

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(*b*) L. P. Act, 1925, s. 101 (1) (ii), gives the mortgagee a charge for the amount paid, and interest at the same rate as the interest on the mortgage money.

Trustees lending on a guarantee policy.

(*c*) A guarantee policy is not a contract of indemnity, but a contract of suretyship : *Re Denton* [1904], 2 Ch. 178 ; 73 L. J. Ch. 465. Apart from express powers, trustees cannot properly lend money where the security would be insufficient without the guarantee policy, though no doubt they may treat the policy as an additional covenant to pay.

aforesaid shall stand charged with the amount so to be repaid and the interest thereon.

No. 20.

THE Borrower hereby covenants with the Mortgagee[s] in manner following (that is to say)—

Covenant to keep up life policy.(*d*)

(i) That (*e*) so long as any money remains due under this security the Borrower will not, without giving notice in writing to the Mortgagee[s], go beyond the limits (*f*) permitted by the policy[ies] hereby assigned, or any new policy to be effected as hereinafter provided, and will not do or permit anything whereby any such policy may become void or voidable, or whereby the Mortgagee[s] may be prevented from receiving or recovering any money thereby assured, And that the Borrower will immediately at his own cost, in case any such policy shall become voidable, do all things necessary for restoring the same, And in case any such policy shall become void, also do and furnish all acts, certificates and things necessary or proper to enable the Mortgagee[s] to effect a new policy on the life of the Borrower in the name[s] of the Mortgagee[s] (*g*) for the amount which would have become payable under the void policy if it had remained in force and the Borrower had died at the time when it became void, And that every such new policy, and the money payable thereunder, shall be subject to the like right of redemption and be held and applied in like manner as the policy[ies] hereby assigned and the money payable thereunder :

(ii) That the Borrower will during the continuance of this present security duly pay every sum from time to time payable for keeping on foot the said [every] policy[ies] [for the time being subject to this security (*h*)], and will make each payment within seven days after the first day on which it becomes

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(*d*) In the absence of express provision, a mortgagee may charge the property with any money expended by him for keeping up the policy, with interest at £4 per cent. : *Bellamy* v. *Brickenden* (1861), 2 John. & H. 137 ; *Gill* v. *Downing* (1874), L. R. 17 Eq. 316.

Mortgagee entitled to keep up policy.

(*e*) The first sub-clause of the covenant may be omitted where the policy is an indisputable policy.

Variation where policy indisputable.

(*f*) Going beyond limits would not make a policy void if the proper additional premium be paid, but might throw an additional charge on the mortgagee.

As to the duty of a trustee in bankruptcy in respect of a mortgaged policy see *Re Tyler* [1907], 1 K. B. 865 ; 76 L. J. K. B. 541.

Duty of trustee in bankruptcy.

(*g*) The addition of the survivors or survivor, or of any other person to whom the right to sue on this covenant devolves, is not necessary : L. P. Act, 1925, s. 81 (1), and will be deemed to have been made also with each of the covenantees.

Survivorship of covenants.

(*h*) Omit if the policy is indisputable and the first sub-clause is not used.

payable, and will forthwith deliver the receipt for [or other sufficient evidence of (*i*)] every such payment to the Mortgagee[s], And that in default the Mortgagee[s] or the persons deriving title under him [them] may pay every such sum, And the Borrower will repay to the Mortgagee[s] or the persons deriving title under him [them] all sums so paid [and all costs and expenses incurred in restoring any voidable policy or in effecting any new policy or otherwise in relation to the property (*h*)], with interest for the same at the rate of £— per cent. per annum from the time of each payment, And until repayment the property hereinbefore charged [*or* demised] [and assigned] [and every new policy to be effected as aforesaid] shall stand charged with the amount so to be repaid and the interest thereon.

PROVIDED that—

No. 21.

Power to surrender policies to insurers.

(i) Any policy for the time being subject to this security may under the statutory power of sale or otherwise be surrendered to the [Mortgagee[s] or any other (*j*)] insurers by whom it was granted at a price which shall not be less than the surrender value of the policy according to the tables for the time being in use by such insurers, or

(ii) The Mortgagee[s] may at any time (whether the statutory power of sale is exercisable or not) surrender any such policy in exchange for a fully paid-up policy or make such other arrangements with such insurers as the Mortgagee[s] may think fit.

No. 22.

Power of attorney in mortgage of public-house to recover compensation, and obtain renewals of licences, &c.

FOR the consideration aforesaid the Borrower hereby irrevocably nominates and appoints the Mortgagee[s and each of them] and the persons deriving title under him [them] or his or their substitute or substitutes jointly and severally to be the attorney and attorneys of the Borrower for him and in his name and on his behalf—

(i) To recover and give receipts for any compensation payable under the Licensing (Consolidation) Act, 1910 ;

(ii) To apply for and obtain from time to time renewals of the licences hereby assigned and to sign all proper notices and other documents and to do all necessary acts for assigning or transferring the said licences to the Mortgagee[s] or the persons deriving title under him [them], or as [he or] they may otherwise

(*h*) See note on last page.

(*i*) If the mortgage is not a first mortgage the receipts may have to be delivered to the first mortgagee.

Surrender of policy under statutory power of sale.

(*j*) There would seem to be no objection to a surrender of a policy to the insurers under the statutory power of sale, unless the mortgagees are the insurance company.

require, and for withdrawing the entry of the name of the Borrower from the books of the excise in respect of the property.

No. 23.

(1) THE Borrower hereby covenants with the Mortgagee[s] that so long as any money remains owing under this security—

Covenants in mortgage of a public-house.

(i) The Borrower or the persons deriving title under him will not use or sell or permit to be used or sold on the property hereby charged [*or* demised] any beer, stout, or other malt liquor which shall not have been purchased direct from the Mortgagee[s] or his [their] agents ;

Where there is a tied house.(*k*)

(ii) The Borrower or the persons deriving title under him will not sever from the land or remove from the property hereby charged [demised] any trade or other fixtures now fixed or hereafter to be affixed to the property except for the purpose of renewing or replacing the same by other fixtures of equal or greater value. And also will not do or permit any act whereby

Not to remove fixtures.(*l*)

(*k*) A mortgage of a public-house may contain a "tying" covenant during the continuance of the security : *Biggs* v. *Hoddinott* [1898], 2 Ch. 307 ; 67 L. J. Ch. 540 ; *Noakes & Co.* v. *Rice* [1902], A. C. 24 ; 71 L. J. Ch. 139 ; *Fairclough* v. *Swan Brewery* [1912], A. C. 565 ; 81 L. J. P. C. 207 ; but see *Kreglinger* v. *New Patagonia Meat Co.* [1914], A. C. 25 ; 83 L. J. Ch. 79. The covenant must be reasonable : *Morgan* v. *Jeffreys* [1910], 1 Ch. 620 ; 79 L. J. Ch. 360. In a lease by brewers to a tenant who is tied, a covenant by the tenant to pay the whole additional duties imposed by Fin. (1909-10) Act, 1910, is ineffectual : s. 46.

Tied houses.

(*l*) The power to sell, foreclose, etc., applies to the absolute interest in fixtures though only expressed to be demised or charged by the mortgage : L. P. Act, 1925, ss. 88 (4), 89 (4). Notwithstanding the Bills of Sale Acts, trade machinery and other fixtures (even though belonging to a third party under a hire-purchase agreement of which the mortgagee has no notice : *Hobson* v. *Gorringe* [1897], 1 Ch. 182 ; 66 L. J. Ch. 114 ; *Reynolds* v. *Ashby and Son* [1904], A. C. 466 ; 73 L. J. K. B. 946) will be included in a mortgage as affected by the charge or demise : *Southport, &c., Bnkg. Co.* v. *Thompson* (1887), 37 Ch. D. 64 ; 57 L. J. Ch. 114 ; *Re Yates* (1888), 38 Ch. D. 112 ; 57 L. J. Ch. 697 ; *Johns* v. *Ware* [1899], 1 Ch. 359 ; 68 L. J. Ch. 155 ; *Re Rogerstone B. & S. Co.* [1919], 1 Ch. 110 ; 88 L. J. Ch. 49 ; and whether or not expressly mentioned by reference to a schedule : *Re Brooke* [1894], 2 Ch. 600 ; 64 L. J. Ch. 21, unless, by implication, taken out of the charge ; *Small* v. *National Prov. Bk. of England* [1894], 1 Ch. 686 ; 63 L. J. Ch. 270. This applies to equitable as well as legal mortgages : *Meux* v. *Jacobs* (1875), L. R. 7 H. L. 481 ; 44 L. J. Ch. 481 ; *Ex p. Lusty* (1889), 60 L. T. 160 ; but a prior equitable interest in fixtures will have priority to a subsequent equitable charge : *Re Samuel Allen & Sons, Ltd.* [1907], 1 Ch. 575 ; 76 L. J. Ch. 362 ; *Re Morrison* [1914], 1 Ch. 50 ; 83 L. J. Ch. 129 ; but in the case of a legal charge the interest might be postponed under the over-reaching or defeating provisions affecting the land to which the fixtures are annexed. Fixtures attached by the lessee after the date of the mortgage : *Meux* v. *Jacobs, supra* (except trade fixtures brought on to the premises by a tenant of the mortgagor : *Sanders* v. *Davis* (1885), 15 Q. B. D. 218 ; 54 L. J. Q. B. 576), and fixtures replacing others, even though not physically annexed : *Monti* v. *Barnes* [1901], 1 K. B. 205 ; 70 L. J. K. B. 225, will become subject to the mortgage.

Fixtures in mortgages.

Not to endanger licences.

the licences (*m*) held in connexion with the property or any of them may become void or voidable, or whereby the renewal thereof may be endangered, and will duly renew all the said licences as and when the same become renewable and pay all costs and expenses necessary to obtain such renewal, and will at all times conduct the business in a lawful, orderly and proper manner ;

To pay charges under Licensing Act, 1910.

(iii) The Borrower or the persons deriving title under him will pay all charges which may be imposed in respect of the said licences or any of them by virtue of the Licensing (Consolidation) Act, 1910, or any amendment thereof, and in default the Mortgagee[s] or the persons deriving title under him [them] may pay all such costs, charges and expenses, and the Borrower will repay the same with interest thereon at the rate aforesaid from the time of each payment, And until repayment the property hereinbefore charged [demised] and assigned (*n*) shall stand charged with the amount to be so repaid and the interest thereon ;

To insure trade fixtures as well as buildings.

(iv) The Borrower or the persons deriving title under him—

(a) Will insure and keep insured all buildings and trade fittings and fixtures in or upon the property hereby charged [demised] against loss or damage by fire in every case in at least a sum equal to three-fourths part of the amount required to rebuild or replace the same in case of total destruction, and will keep the said fittings and fixtures in good repair and will pay every sum from time to time payable for keeping on foot every such

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Removal of fixtures by mortgagor.

Fixtures cannot be sold apart from the land under a power of sale in the mortgage : *Ex p. Brown* (1879), 9 Ch. D. 390 ; 48 L. J. Bk. 10 ; nor under the statutory power. If a power is inserted in the mortgage to remove and sell the fixtures apart from the land the deed must be registered as a bill of sale : *Johns* v. *Ware*, *supra*. In the absence of express stipulation, a borrower can remove fixtures, though the right to do so ceases on the mortgagee taking possession : *Ellis* v. *Glover* [1908], 1 K. B. 388 ; 77 L. J. K. B. 251, but this extends only to removal of fixtures effected by the borrower for the purposes of his trade : *Gough* v. *Wood* [1894], 1 Q. B. 713 ; 63 L. J. Q. B. 564 ; he cannot remove fixtures for the express purpose of preventing the mortgagee claiming them : *Huddersfield Bkg. Co.* v. *Lister* [1895], 2 Ch., at p. 282 ; 64 L. J. Ch. 523. If the mortgage is bad as regards fixtures : *Re Yates, supra ; Climpson* v. *Coles* (1889), 23 Q. B. D. 465 ; 58 L. J. Q. B. 346, it may nevertheless be valid in other respects : *Re London and Lancashire, &c., Co.* (1888), W. N. 36.

(*m*) See Fin. (1909-10) Act, 1910, Pt. II, and First Schedule for new scale of licences.

(*n*) This word should be added as the mortgage includes the goodwill of the business.

insurance and for keeping on foot a proper Guarantee Policy against forfeiture of each of the licences aforesaid within seven days after the first day on which it becomes payable. To keep up guarantee policy.(o)

(b) Will forthwith deliver to the Mortgagee[s] the policies of insurance and the Guarantee Policies and will also when required deliver to him [them] or the persons deriving title under him [them] the receipt for every sum payable as aforesaid.

(c) Provided that in default the Borrower or the persons deriving title under him shall repay to the Mortgagee[s] or the persons deriving title under him [them] every sum which under the statutory power (which shall extend to all the insurances aforesaid) may be expended by [him or] them in keeping the said buildings and other items insured to the amount aforesaid, with interest thereon at the rate of £— per cent. per annum from the time of each payment, and also every sum which may be expended by [him or] them (and which in case of default [he or] they are hereby authorised to expend) in keeping up or restoring any such Guarantee Policy, with interest for the same at the rate aforesaid from the time of each payment.

(d) Until repayment the property hereinbefore charged [demised] and assigned shall stand charged with the amount to be so repaid and the interest thereon.

(2) THE covenant as to insurance hereinbefore contained shall so long as the same is duly performed be in satisfaction of the statutory right (as extended or aforesaid) of the Mortgagee[s] or the persons deriving title under [him or] them to effect and keep on foot Fire and other Insurances.

No. 24.

(1) PROVIDED as follows—

Provision for repayment of mortgage money by instalments of fixed amounts.

(i) If the Borrower or the persons deriving title under him shall pay to the Mortgagee[s] or the persons deriving title under him [them] the said sum of £——, with interest thereon at the rate aforesaid [*or* the reduced rate], by the instalments, at the times and in the manner hereinafter mentioned (that is to say), the said principal sum of £——, by —— equal half-yearly payments of £—— each on the —— day of —— and the —— day of —— in every year whereof the first is to be paid on the —— day of —— next, and the interest on the principal money for the time

(o) See also, as to guarantee policies, Form No. 19, *supra*.

being unpaid by half-yearly payments on the —— day of —— and the —— day of —— in every year, whereof the first is to be made on the —— day of —— next, or (as to each such payment of principal and interest) shall make the same within thirty days next after the day so appointed for payment thereof respectively [interest being also paid on the instalment for so much (if any) of such thirty days as may have expired] : and

(ii) If there shall not have been any breach of any obligation, statutory or otherwise, binding on the Borrower or of any of the covenants, whether express or implied, herein contained and on his part to be observed and performed (other than and besides the covenants for payment of the principal money and interest hereby secured) :

THEN the Mortgagee[s] or the persons deriving title under him [them] shall accept payment of the said sum of £—— and the interest thereon by the instalments, at the times, and in the manner aforesaid and will not require payment of such principal money otherwise than by such instalments :

Provision as to statutory power of sale.(*p*)

(2) NOTWITHSTANDING the provision for the payment of the principal money hereby secured by instalments, but without prejudice to that provision, such principal money shall be deemed to become due within the meaning of the Law of Property Act, 1925, and for all purposes of that Act, on the —— day of —— next.

No. 25.

Power for Borrower to pay mortgage-money by instalments of unfixed amounts.(*q*)

PROVIDED that the Borrower or the persons deriving title under him may on any half-yearly day hereinbefore fixed for payment of interest, upon giving at least one month's notice in writing to the Mortgagee[s] or the persons deriving title under [him or] them, pay off all or any part of the principal money for the time being owing on this security, but so that not less than the sum of £—— shall be paid off at any one time, and so that upon any payment of principal as aforesaid the interest due on the last half-yearly day in respect of the whole principal money for the time being owing as aforesaid shall be paid.

No. 26.

Power for the borrower to pay off part of the principal money.

THE Borrower or the persons deriving title under him may from time to time pay in or towards discharge of the principal money for the time being due on this security any sum not less than £—— and being a multiple of £100 :

(*p*) See *Walsh* v. *Derrick* (1903), 19 T. L. R. 209.

(*q*) This Form can be added as a proviso to the usual covenant to pay principal and interest ; it is assumed that the last Form will not also be used.

PROVIDED that—

(i) Notice in writing of the day of payment and of the amount intended to be paid shall be given to the Mortgagee[s] or the persons deriving title under him [them] not less than three months before the day for payment mentioned in the notice:

(ii) All interest due under this deed down to the last preceding half-yearly date fixed for payment of interest shall have been paid and that any further interest on the principal money paid be also paid at the same time:

Subject as aforesaid payment shall be accepted on the expiration of the notice or within fourteen days thereafter.

No. 27.

Mortgagees to concur in sales by Borrower and accept proceeds in part discharge.

(1) IF the Borrower shall—

(i) At any time or from time to time sell any of the property hereby charged at a price approved by the Mortgagee[s] [*or* by a competent valuer], and

(ii) Give not less than three months' notice in writing of the intention to make payment, and

(iii) Have paid all interest due under this deed down to the last preceding half-yearly date fixed for payment of interest, and

(iv) Pay any further interest owing on the principal sum paid at the same time:

Then and in such case the Mortgagee[s] shall—

(i) On the expiration of the notice or within fourteen days thereafter, accept payment (towards discharge of the principal money hereby secured) of the net money arising from any such sale after payment thereout of a sum not exceeding £— per cent. thereon for expenses, and

(ii) Concur in the conveyance to the purchaser:

(2) PROVIDED as follows—

(i) The Mortgagee[s] shall not be required to accept payment of any one sum less than £—— or not being a multiple of £100:

(ii) If the said three months' notice shall not have expired or the purchase-money for the time being received shall not be sufficient to make up the sum of £—— or a greater sum being a multiple of £100, such purchase-money, or the balance beyond the said sum of £—— or any greater sum as aforesaid, shall, at the option and risk of the Borrower, be deposited at some bank in London or invested in any securities authorised by statute for the investment of trust money in the joint names of the Borrower and of the Mortgagee[s]:

(iii) The income on the deposit or the investments shall be accumulated by depositing or investing the same in manner

aforesaid until the notice has expired or a sum of £—— or a greater sum being a multiple of £100 can be thereby provided as the case may be :

(iv) Thereupon the required sum shall be taken out of deposit or raised by sale of investments, and shall be paid to and accepted by the Mortgagee[s] as hereinbefore provided, and the balance (if any) shall remain deposited or invested and the income thereof shall continue to be accumulated as aforesaid until a further sum of £—— can be thereby provided :

[(3) In this clause the expressions "the Borrower" and "the Mortgagee[s]" include the persons respectively deriving title under them.]

No. 28.

Mortgagee to accept new security under the approval of the Court.(*r*)

Provided that the Mortgagee[s] or the persons deriving title under him [them] shall from time to time at the request and cost of the Borrower or the persons deriving title under him release or surrender to him or them all or any of the property hereby charged upon a legal charge or demise being made at the like cost to the Mortgagee[s] or the persons deriving title under him [them] of other land of a sufficient value to be approved by the Judge to whom the said action of —— stands assigned, and the title to which land shall also be approved by the said Judge, such charge or demise to be subject to the like right of redemption as may for the time being be subsisting under this security.

No. 29.

Provision for reduction of interest from half-year to half-year.(*s*)

(1) The Mortgagee[s] hereby covenant[s] with the Borrower that if on any half-yearly day hereinbefore fixed for payment of interest, or within thirty days next after any such day, there shall be paid to the Mortgagee[s] interest on the principal money hereby secured at the reduced rate of £— per cent. per annum for the half-year ending on such half-yearly day [and there shall not have been any breach of any obligation, statutory or otherwise, binding on the Borrower or of any of the covenants, whether express or implied, herein contained and on his part to be observed or performed other than and besides the covenant for payment of the principal money and interest hereby secured (*t*)],

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(*r*) It is assumed in this Form that the mortgage is made under an order of the Court, but it can be adapted to other circumstances.

(*s*) The mortgagees will be bound without executing the mortgage.

(*t*) The covenant for payment is always broken. The words within brackets are inserted where the statutory power to lease is not (as it should not usually be) excluded or the borrower has entered into any covenants besides the covenant to pay.

then the Mortgagee[s] or the persons deriving title under him [them] will accept interest for such half-year at the reduced rate of £— per cent. per annum :

(2) THIS provision shall not take effect (*u*) while the Mortgagee[s] or the persons deriving title under him [them] are in possession under this deed as mortgagees in possession [or after a receiver has been appointed under the statutory power], nor in any half-year while any interest previously accrued may remain unpaid, nor after judgment may have been obtained by the Mortgagee[s] or the persons deriving title under him [them] for payment of principal, interest and costs, nor after the expiration of any notice given by the Mortgagee[s] requiring payment of any principal money hereby secured.

No. 30.

Provision for reduction of interest, payment being continuous.

THE Mortgagee[s] hereby covenant[s] with the Borrower that if continuously on each half-yearly day hereinbefore fixed for payment of interest, or within thirty days next after each such day, there shall be paid to the Mortgagee[s] interest on the principal money hereby secured at the reduced rate of £— per cent. per annum for the half-year ending on such half-yearly day, [and so long as there is not any breach of any obligation, statutory or otherwise, binding on the Borrower,(*v*) or of any of the covenants, whether express or implied, herein contained and on his part to be observed or performed, other than and besides the covenant for payment of the principal money and interest hereby secured (*w*)], then the Mortgagee[s] or the persons deriving title under him [them] will accept interest for such principal money at the reduced rate of £— per cent. per annum.(*x*)

Mortgagee in possession.

(*u*) The receipt of rents by a mortgagee in possession is not a payment by the borrower, hence, where the clause is conditional on payment of interest by the borrower, a mortgagee in possession is entitled to the higher rate : *Bright* v. *Campbell* (1889), 41 Ch. D. 388 ; and see *Wrigley* v. *Gill* [1906], 1 Ch. 165 ; 75 L. J. Ch. 210. In view of the wide statutory powers of receivers, a mortgagee will seldom take possession. Where a receiver, by mistake, pays the higher rate of interest, the mortgagor may recover the amount overpaid within the previous six years : *Re Jones* [1914], 1 Ir. R. 188 ; and see *Maclaine* v. *Gatty* [1921], 1 A. C. 376 ; 90 L. J. P. C. 73.

Receivers.

(*v*) As, for instance, the obligation to deliver the counterpart of leases : L. P. Act, 1925, s. 99 (11).

(*w*) This covenant is always broken. The words in brackets will only be inserted where the statutory power of leasing is not excluded, or where there is a covenant as to fire insurance or life policies, or rent of leaseholds, or the like.

(*x*) There may sometimes be a doubt whether an omission to pay interest for one half-year within thirty days puts an end to the right of reduction,

No. 31.

Agreement for mortgage to continue for time certain.(*y*)

(1) THE Mortgagee[s] hereby covenant[s] with the Borrower that if on each half-yearly day hereinbefore fixed for payment of interest, and continuously during the period of —— years from the date hereof, or within thirty days next after each such day, there shall be paid to the Mortgagee[s] or the persons deriving title under him [them] interest on the principal money hereby secured at the reduced (*z*) rate of £— per cent. per annum up to that half-yearly day [and there shall not be any breach of any obligation, statutory or otherwise, binding on the Borrower or of any of the covenants, whether express or implied, herein contained and on his part to be observed or performed, other than and besides the covenant for payment of the principal money and interest hereby secured (*a*)], then the Mortgagee[s] or the persons deriving title under him [them] will not before the expiration of the said period of —— years require payment of the principal money hereby secured, or any part thereof ;(*b*)

(2) AND the Borrower hereby covenants with the Mortgagee[s] that the whole of the principal money hereby secured shall be allowed to remain on this security during the said period of —— years :(*c*)

(3) PROVIDED that, notwithstanding the restriction hereinbefore contained on the right to require payment of principal money, but without prejudice to that restriction, such principal money shall be deemed to become due within the meaning of

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see *Stanhope* v. *Manners* (1763), 2 Eden, 197 ; *Williams* v. *Morgan* [1906], 1 Ch. 804 ; 75 L. J. Ch. 480. This Form does put an end to the right. The preceding Form puts an end to the right for the half-year only.

(*y*) Trustees are now authorised : T. Act, 1925, s. 10 (1), to lend for a term not exceeding seven years, subject as in that section mentioned, thus over-ruling *Vickery* v. *Evans* (1864), 33 Beav. 376 ; 33 L. J. Ch. 261.

(*z*) In the case of interest reducible on punctual payment this should be the reduced rate.

(*a*) As to the words in brackets, see notes to last Form. As to whether receipt of interest implies a waiver of the right to call in principal on breach of covenant, see *Seal* v. *Gimson* (1914), 110 L. T. 583.

Waiver ; Limitation Acts.

(*b*) As to waiver of the default in payment of interest, see *Langridge* v. *Payne* (1862), 2 John. & H. 423 ; *Keene* v. *Biscoe* (1878), 8 Ch. D. 201 ; 47 L. J. Ch. 644. As to when time begins to run for the purpose of the Limitation Acts, see *Reeves* v. *Butcher* [1891], 2 Q. B. 509 ; 60 L. J. Q. B. 619. The fact that a lease has priority to the mortgage will not prevent time running : *Wakefield, &c., Bank* v. *Yates* [1916], 1 Ch. 452 ; 85 L. J. Ch. 360.

(*c*) This covenant is valid : *Teevan* v. *Smith* (1882), 20 Ch. D. 724 ; 51 L. J. Ch. 621 ; *Biggs* v. *Hoddinott* [1898], 2 Ch. 307 ; 67 L. J. Ch. 540 ; but the period must be reasonable : *Morgan* v. *Jeffreys* [1910], 1 Ch. 620 ; 79 L. J. Ch. 360.

the Law of Property Act, 1925, and for all the purposes of that Act on the day on which such principal money is hereinbefore covenanted to be paid.(*d*)

No. 32.

Accumulation clause in mortgage of a reversion.(*e*)

(1) THE Borrower hereby covenants with the Mortgagee[s] that if before the premises hereby assigned [demised] fall into possession any interest upon the principal money hereby secured or on any accumulations of interest arising under this present provision and added to principal money shall not be paid on any half-yearly day hereinbefore appointed for payment of interest, or within thirty days next after such half-yearly day :—

Then from and after such default in payment and until the premises fall into possession (but without prejudice to the right of the Mortgagee[s] or the persons deriving title under him [them] to require payment, or to the right of the Borrower or the persons deriving title under him after due notice to make payment at any time of the principal money, interest and accumulations of interest hereby secured)—

(i) The sum due in respect of the half-year's interest so unpaid shall become principal money as from the half-yearly day on which it became due and be added to the principal money hereby secured ; and shall carry interest at the rate of £— per cent. per annum from the half-yearly day on which such half-year's interest became due :

(ii) The interest upon all sums so converted into principal money shall be payable on the half-yearly days aforesaid :

(iii) All interest unpaid on the original principal sum hereby secured and on all sums converted into principal money under this present provision shall become accumulated in the way of compound interest with half-yearly rests :

(iv) The Borrower or the persons deriving title under him shall when the premises fall into possession pay to the Mortgagee[s] or the persons deriving title under him

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(*d*) *Semble*, this clause is required to prevent any question as to the date when the statutory powers of sale, &c., arise.

(*e*) Such a clause is valid, see *Clarkson* v. *Henderson* (1880), 14 Ch. D. 348 ; 49 L. J. Ch. 289 ; *Salt* v. *Marquess of Northampton* [1892], A. C. 1 ; 61 L. J. Ch. 49. See an article in 45 Sol. J. 404 ; also L. P. Act, 1925, ss. 136 (legal assignments of things in action), 137 (notices of dealings with life interests and reversions), 138 (trust corporations to receive notices), 174 (acquisitions of reversions at an under-value).

Stamp.

When the Form is used, see that the stamp will be sufficient to cover interest converted into principal.

Deduction of tax.

Income tax on each instalment at the current rate should be deducted in the accounts where the interest is capitalised : *Re Morris* (1920), 65 Sol. J. 95.

[them] (*f*) the said accumulated fund as well as the original principal sum hereby secured, with interest thereon respectively at the rate aforesaid until payment :

(v) Such fund and sum and the interest thereon shall constitute a charge on the premises hereby assigned [demised], and those premises shall not be redeemed except on payment of all principal money hereby secured, and all interest and accumulations made as aforesaid of interest on such principal money and accumulations :

(2) PROVIDED that the Borrower or the persons deriving title under him may at any time, after three months' previous notice in writing given for the purpose to the Mortgagee[s] or the persons deriving title under him [them], pay to him or them all interest and accumulations of interest for the time being due to him or them.

No. 33.

Covenant to pay costs of obtaining stop order, &c.(*g*)

THE Borrower hereby covenants with the Mortgagee[s] that he will on demand pay to the Mortgagee[s] or the persons deriving title under him [them] all costs, charges and expenses to be incurred, or which the Mortgagee[s] or the persons deriving title under him [them] may be ordered to pay in or about or consequent on—

(i) Obtaining, giving, removing or withdrawing any stop order or any other order or any notice required to complete the validity of this security upon the money or investments for the time being comprised therein, or

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Recovery of interest.

(*f*) Under a mortgage of a reversionary interest in personalty (even though invested on mortgage of real estate) more than six years' arrears of interest can be recovered : *Smith* v. *Hill* (1878), 9 Ch. D. 143 ; 47 L. J. Ch. 788 ; *Clarkson* v. *Henderson* (1880), 14 Ch. D. 348 ; 49 L. J. Ch. 289 (where there was an accumulation clause, and *cf. Salt* v. *Marquess of Northampton* [1892], A. C. 1 ; 61 L. J. Ch. 49) ; *Mellersh* v. *Brown* (1890), 45 Ch. D. 225 ; 60 L. J. Ch. 43. In the absence of an accumulation clause not more than six years' arrears can be recovered in the case of a reversionary interest in realty, or the proceeds of sale thereof : *Bowyer* v. *Woodman* (1867), L. R. 3 Eq. 313 ; or money charged on land, see *Smith* v. *Hill, supra ;* but the mortgagee is not limited to six years' arrears, either on exercising his power of sale : *Edmunds* v. *Waugh* (1866), L. R. 1 Eq. 418 ; *Re Marshfield* (1887), 34 Ch. D. 721 ; 56 L. J. Ch. 599 ; or in an action to redeem : *Dingle* v. *Coppen* [1899], 1 Ch. 726 ; 68 L. J. Ch. 337 ; and see *Re Lloyd* [1903], 1 Ch. 385 ; 72 L. J. Ch. 78 ; *Re Hazeldine* [1908], 1 Ch. 34 ; 77 L. J. Ch. 97 ; *Re Fox* [1913], 2 Ch. 75 ; 82 L. J. Ch. 393.

The above clause purports to charge the accumulated fund on the property when it falls into possession and thus prevent any question arising as to recovery of arrears of interest in the case of realty.

(*g*) See R. S. C., O. 46, rr. 2, *et seq.*, 12, *et seq.* As to notices, see L. P. Act, 1925, s. 137 (1).

(ii) The making application or appearing or attending in any action or proceeding affecting such money or investments for the purpose of receiving or recovering or attempting to receive or recover the same or any part thereof or any income thereof, or

(iii) Protecting or enforcing in any other manner the security intended to be hereby made—

Together with interest on the amount of all such costs, charges or expenses at the rate of £— per cent. per annum computed from the date at which the same were respectively paid by the Mortgagee[s] or the persons deriving title under him [them], and until payment such amount and the interest thereon shall be a charge on the premises hereby assigned [demised].

No. 34.

Liability as between Borrower and the mortgaged property.

PROVIDED that without prejudice to the rights and remedies of the Mortgagee[s] and the enforcement thereof in such order and manner as may be thought proper, the premises hereby charged [demised], shall be and remain charged with and primarily liable in exoneration of the Borrower and his [other] assets for the payment of the principal money and interest hereby secured.(*h*)

No. 35.

Surety to be liable as a principal debtor.(*i*)

PROVIDED that (without prejudice to any rights of the Surety against the Borrower as principal debtor) the Surety shall under the covenant by him hereinbefore contained be deemed a

(*h*) This Form is generally used when a tenant for life joins to covenant to pay principal and interest. He does not, as regards the mortgagee, thereby become a surety: *Nicholas* v. *Ridley* [1904], 1 Ch. 192; 73 L. J. Ch. 145.

Reasons for joining surety.

(*i*) This form is used where the surety joins as covenantor only. Where the personal covenants of the borrower cannot safely be relied upon, *e.g.*, in mortgages of reversionary interests, it is desirable to join a third party for the purpose of guaranteeing the principal and interest, or the interest alone, and the performance of the borrower's covenants. Care should be taken that the surety is independently advised and is a suitable person, as in some cases, *e.g.*, where the borrower is the surety's father, the Court will presume that the surety is acting under the undue influence of the borrower: Withers on Reversions, 163, *et seq.*

Surety discharged from liability by new arrangement with debtor, *e.g.*, by giving him further time.

Where a person joins as surety it is necessary that he should be made acquainted with all the circumstances and facts which bear upon or can affect his position, for, if he is kept in ignorance of anything which might have influenced him in undertaking the obligation, the creditor will have no remedy against him. In order to preserve his obligation care must be taken in all subsequent transactions between the principal debtor and the creditor that no arrangement is made between them either as to the payment of the debt or the securities which can prejudicially affect the surety's position. Thus, if further time is given by the creditor to the principal debtor for the payment of the debt (*Nisbet* v. *Smith* (1785), 2 Bro. C. C. 579) without the surety's consent, and without reserving a right to proceed against the surety (*Overend Gurney & Co.* v. *Oriental Fin. Corpn.* (1874), L. R. 7 H. L.

348; 41 L. J. Ch. 332; *Bolton* v. *Buckenham* [1891], 1 Q. B. 278; 60 L. J. Q. B. 261; *Bolton* v. *Salmon* (1891), 2 Ch. 48; 60 L. J. Ch. 239; and see *Rouse* v. *Bradford Bnkg. Co.* [1894], 2 Ch. 32; [1894], A. C. 586; 63 L. J. Ch. 337, 890; and *Greenwood* v. *Francis* [1899], 1 Q. B. 312; 68 L. J. Q. B. 228), or if the creditor, without the consent of the surety, compounds with the principal debtor or releases him from payment of the debt (*Webb* v. *Hewitt* (1857), 3 K. & J. 438; *Nicholson* v. *Revill* (1836), 4 Ad. & El. 675; 5 L. J. K. B. 129), the surety will be discharged (*Rees* v. *Berrington*, and the notes thereon in Wh. and Tud. L. C. in Equity, 8th ed., Vol. II, pp. 571, *et seq.*), though a binding agreement made by a creditor with a stranger (or a co-surety: *Clarke* v. *Birley* (1889), 41 Ch. D. 422; 58 L. J. Ch. 616) to give time to the principal debtor will not operate as a discharge: *Fraser* v. *Jordan* (1857), 8 El. & Bl. 303; 26 L. J. Q. B. 288; nor will giving time to the principal debtor after obtaining judgment against both the debtor and surety release the latter: *Re A Debtor* [1913], 3 K. B. 11; 82 L. J. K. B. 907. *Semble*, a covenant not to sue the principal debtor, subject to a proviso that the creditor shall not be prevented from suing any other person than the principal debtor who might be liable to pay the money, does not discharge the surety: *Price* v. *Barker* (1855), 4 El. & Bl. 760; 24 L. J. Q. B. 130; *Green* v. *Wynn* (1869), L. R. 4 Ch. 204; 38 L. J. Ch. 220; *Bateson* v. *Gosling* (1871), L. R. 7 C. P. 9; 41 L. J. C. P. 53; *Commercial Bk., &c.* v. *Jones* [1893], A. C. 313; 62 L. J. P. C. 104. The surety will not be released from his obligations if his remedies are not affected by the arrangement between the creditor and the principal debtor (*Hulme* v. *Coles* (1827), 2 Sim. 12; *Price* v. *Edmunds* (1830), 10 B. & C. 578; 8 L. J. (O. S.) K. B. 119), or if further time is given with the consent of the surety, or if the right of the principal debtor to proceed against the surety is clearly reserved (*Boultbee* v. *Stubbs* (1810), 18 Ves. 20; *Webb* v. *Hewitt, supra*) or if the surety has expressly bound himself by the deed creating the suretyship to continue liable (*Perry* v. *Nat. Prov. Bk. of England* [1910], 1 Ch. 464), or by the creditor not taking proceedings against the principal debtor for the payment of the debt, or by his taking an additional security, and afterwards releasing such further security: *Newton* v. *Chorlton* (1853), 10 Hare, 646. But the surety would be released if the creditor were to take from the debtor a security in substitution for all or any of the original securities: *Mayhew* v. *Boyes* (1910), 103 L. T. 1; Wh. & Tud. L. C. in Equity, 8th ed., Vol. II, p. 571. The creditor is not bound to communicate to the surety his suspicions of the debtor's acts: *Nat. Prov. Bank* v. *Glanusk* [1913], 3 K. B. 335; 82 L. J. K. B. 1033. A surety is not discharged by the assignment of the benefit of the debt: *Bradford Old Bank* v. *Sutcliffe* [1918], 2 K. B. 833; 88 L. J. K. B. 85; see S. C. as to effect of lunacy on a contract of suretyship.

No release if surety's remedies against debtor are unaffected.

Release of one surety is a release of others.

If there are two sureties, and the creditor releases one, such release operates as a release of the other: *Nicholson* v. *Revill, supra*; *Evans* v. *Bremridge* (1855) 2 K. & J. 183; 8 De G. M. & G. 100; 25 L. J. Ch. 334. This applies equally whether the obligation arises upon a judgment or upon any other security: *Re E. W. A.* [1901], 2 K. B. 642; 70 L. J. K. B. 810. If the mortgage deed is drawn in such a manner that several sureties enter into joint and several covenants, the execution of all is necessary in order to affect all or any of them: *Evans* v. *Bremridge, supra*; *Fitzgerald* v. *M'Cowan* [1898], 2 Ir. R. 1; *Nat. Prov. Bk. of England* v. *Brackenbury* [1906], 22 T. L. R. 797. If a surety pays the debt of the principal debtor, he is entitled to stand in the place of the creditor as to all his remedies and the benefit of all his securities (whether they be land, specialty or otherwise) for the payment of his debt: *Newton* v. *Chorlton, supra*; *Forbes* v. *Jackson* (1882), 19 Ch. D. 615; 51 L. J. Ch. 690; Mercantile Law Amendment Act, 1856, s. 5. This

Surety paying debt entitled to stand in place of creditor.

principal debtor and not merely a surety, and accordingly shall not be discharged, nor shall his liability be affected by—

(i) any giving of time for payment of principal money or interest; or

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applies even if such surety has not obtained an actual assignment of the judgment: *Re M'Myn* (1886), 33 Ch. D. 575; 55 L. J. Ch. 845. A surety for the whole debt, with a limited liability, cannot stand in the shoes of the principal creditor on payment of the amount for which he is liable until the whole debt has been paid off: *Huggard* v. *Representative Church Body* [1916], 1 Ir. R. 1. Under a joint and several suretyship the death of one of the sureties does not determine the liability of the surviving co-surety: *Beckett* v. *Addyman* (1882), 9 Q. B. D. 783; 51 L. J. Q. B. 597, see also *Re Ennis* [1893], 3 Ch. 238; 62 L. J. Ch. 991, and *Re Crace* [1902], 1 Ch. 733; 71 L. J. Ch. 358.

Accrued debt.

Where a surety or one of several co-sureties is liable for an accrued debt and admits liability, he can compel the principal debtor to relieve him from his liability by paying the debt: *Ascherson* v. *Tredegar Dry Dock, &c., Co.* [1909], 2 Ch. 401; 78 L. J. Ch. 697.

Contribution between co-sureties.

Where one of several co-sureties discharges the liability or part of the liability of the others, he can call upon the others for contribution: *Deering* v. *Winchelsea* (1787), 2 B. & P. 270; *Cowell* v. *Edwards* (1800), 2 B. & P. 268, and see *Re Denton* [1904], 2 Ch. 178; 73 L. J. Ch. 465. A surety is not entitled to call upon his co-surety for contribution unless he has paid, or been called on to pay, more than his proportion of the debt due: *Ex p. Snowdon* (1881), 17 Ch. D. 44; 50 L. J. Ch. 540; *Wolmershausen* v. *Gullick* [1893], 2 Ch. 514; 62 L. J. Ch. 773; *Ascherson* v. *Tredegar* [1909], 2 Ch. 401; 78 L. J. Ch. 697; *Stirling* v. *Burdett* [1911], 2 Ch. 418; 81 L. J. Ch. 49; Wh. & Tud. L. C. in Equity, 8th ed., Vol. II, p. 539.

Rights of co-sureties where one obtains a counter-security.

If one of several co-sureties obtains a counter-security from the principal debtor, he is bound to bring all money received under it into hotchpot for the benefit of the other co-sureties. When a co-surety has handed over to the others their share of the money received, he will be again entitled to recover out of the counter-security the amount so handed over, whereupon their right to participate again arises, and so *toties quoties*, so that in effect the counter-security enures for the benefit of all the sureties to the full extent of the principal debt: *Berridge* v. *B.* (1890), 44 Ch. D. 168; 59 L. J. Ch. 533. The principal creditor is not entitled to the benefit of counter-securities given by the principal debtor to the surety: *Re Walker* [1892], 1 Ch. 621; 61 L. J. Ch. 234.

Surety for infant.

A guarantee for the repayment of money advanced to an infant is binding, though the security, so far as regards the infant, is void: *Wauthier* v. *Wilson* (1912), 28 T. L. R. 239. The debt is valid unless it is repudiated upon the infant's majority. A debt incurred for the purchase of necessaries for the infant cannot be repudiated: *Gardner* v. *Wainfur* (1920), 89 L. J. Ch. 89. A person lending money to an infant for the purchase of necessaries may stand in the shoes of the person supplying the necessaries.

Procedure in action against sureties.

Under R. S. C., O. 16, r. 6, a plaintiff may, at his option, join as parties to the action all or any of the persons severally, or jointly and severally, liable on any one contract (see Annual Practice, n. on O. 16, r. 6), and under r. 48 the surety, being sued, can call on the principal debtor to indemnify him: *Ex p. Young* (1881), 17 Ch. D. 668; 50 L. J. Ch. 824. See further as to the law of sureties, Wh. and Tud., L. C. in Equity, 8th ed., Vol. II, 539 to 604, and De Colyar's Law of Guarantees.

(ii) any agreement not to call in principal money before a specified time ; or

(iii) substitution of any new covenant to pay ; or

(iv) consolidation of mortgages ; or

(v) any transfer of mortgage or any security given for a further advance ; or

(vi) any mortgage or sale of or other dealing with the right of redemption ; or

(vii) any other arrangement or dealings between the Borrower and the Mortgagee[s] or the persons deriving title under him [them] in reference to this security, or the property comprised therein ; or

(viii) any omission on the part of the Mortgagee[s] or the persons deriving title under him [them] to enforce any covenant or stipulation contained in this security, and on the part of the Borrower to be performed or observed ; or

(ix) any other act or thing or omission or means whereby the liability of the surety would not have been discharged if he had been a principal debtor.

No. 36. Mortgage given by a surety to be a principal mortgage.(*j*)

PROVIDED that as between the Mortgagee[s] and the persons deriving title under him [them] on the one hand and the Borrower and the Surety and the persons respectively deriving title under them on the other hand—

(a) The recited Mortgage and this deed shall be deemed as forming together one security ;

(b) This deed shall be deemed a principal and not a collateral security ;

(c) The Surety shall be deemed a principal debtor and not merely a surety ;

And accordingly neither the Surety nor this security shall be discharged or affected by—

(i) any giving of time for payment of principal money or interest (*continue as in the last Form with the necessary alterations*).

No. 37. Power of consolidation reserved, and power of sale to be exercisable without notice.

SECTION[S] ninety-three (relating to consolidation) [and one hundred and three (regulating the exercise of the power of sale) (*k*)] of the Law of Property Act, 1925, shall not apply to this deed or the security hereby made.

(*j*) See note to last Form.

(*k*) Save where a succession of mortgages are contemplated, s. 93 should not be excluded. Again, it is not usual to exclude s. 103 ; it must not be

No. 38.

Borrower not to grant Leases or accept surrenders without consent.(*l*)

THE Borrower or any person deriving title under him shall not, except with the consent in writing of the Mortgagee[s] or the persons for the time being deriving title under him [them], exercise the powers of leasing or of agreeing to lease or of accepting surrenders of leases conferred by the Law of Property Act, 1925, on a mortgagor while in possession,(*m*) but it shall not be necessary to express such consent in any such Lease,

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excluded in a mortgage from a client to his solicitor prepared by the latter: *Cockburn* v. *Edwards* (1881), 18 Ch. D. 449; 51 L. J. Ch. 46; *Cradock* v. *Rogers* (1885), W. N. 134; 53 L. J. Ch. 968; *Pooley's Trustee* v. *Whetham* (1886), 33 Ch. D. 111; 55 L. J. Ch. 899.

Effect of excluding statutory powers to lease and accept surrenders.

(*l*) L. P. Act, 1925, ss. 99 and 100, authorise variations and modifications of the statutory provisions of leasing and of accepting surrenders to be made in the mortgage, or otherwise in writing. As a general rule, it is a mistake wholly to exclude the operation of these sections. The leases authorised are generally for the benefit of both parties, and if the leasing power is not excluded the mortgagee becomes, under s. 141, the reversioner, and can sue on the covenants: *Municipal, &c., Building Socy.* v. *Smith* (1888), 22 Q. B. D. 70; 58 L. J. Q. B. 61; and see *Wilson* v. *Queen's Club* [1891], 3 Ch. 522; 60 L. J. Ch. 698. Now that the mortgagor must retain the fee simple or the head term it is conceived that any lease by him may be a valid legal lease, but it would not be binding on the mortgagee, if the statutory power is excluded, unless it is subsequently confirmed or adopted by him. Before 1912 a lease could not be surrendered to a mortgagor so as to merge (see *Robbins* v. *Whyte* [1906], 1 K. B. 125; 75 L. J. K. B. 38), but the mortgagor could sue on the covenants so long as he remained in possession: *Turner* v. *Walsh* [1909], 2 K. B. 484; 78 L. J. K. B. 753. If the leasing power is excluded, and leases are nevertheless granted by the mortgagor, then the mortgagee is a stranger to the lessee, and cannot sue: Woodfall, L. & T., 21st ed., p. 68. The mortgagee by title paramount can eject without notice: *Keech* v. *Hall* (1778), 1 Doug. 21; 1 Smith's L. C., 11th ed., 511; but in the case of an agricultural holding, only after giving six months' notice, and subject to the tenant's claim for compensation for improvements, see the Agr. Hold. Act, 1923, s. 15. If rent is accepted the lessee becomes a yearly tenant; as to the terms of this tenancy, see Woodfall, L. & T., 21st ed., 68, 69. The fact that a tenant remains in possession after receiving notice to pay rent to the mortgagees does not make him the tenant of the mortgagees: *Towerson* v. *Jackson* [1891], 2 Q. B. 484; 61 L. J. Q. B. 36.

Power to accept surrenders.

The powers of accepting surrenders can only be exercised for the purpose of granting a new authorised lease, and the new lease must take effect in possession within one month from the date of the surrender. The section does not apply without the consent of the mortgagee where consideration is paid by the lessee for the acceptance of the surrender. Moreover, the new lease must not be for a less term than the unexpired residue of the surrendered term, and the rent must not be less; hence the power should be allowed to remain.

(*m*) The mortgagee cannot alone exercise the powers until he either goes into possession: *Noyes* v. *Pollock* (1886), 32 Ch. D. 53; 55 L. J. Ch. 513, and see *Chapman* v. *Smith* [1907], 2 Ch. 97; 76 L. J. Ch. 394; or appoints a receiver: L. P. Act, 1925, s. 99; he can then delegate the powers to the receiver, but the receiver cannot use his own name.

Agreement or Surrender [nor shall any lessee be concerned to see that any such consent has been given].

No. 39.

Borrower not to grant Building Leases or Leases for a longer term than fourteen years.

No Building Lease or agreement therefor by the Borrower or any person deriving title under him shall have effect by virtue of section ninety-nine of the Law of Property Act, 1925, unless the Mortgagee[s] or the persons deriving title under him [them] shall consent thereto in writing, but it shall not be necessary to express such consent in any such Lease or Agreement therefor(*n*) nor shall any lessee be concerned to see that any such consent has been given [and no Lease by the Borrower (other than a Building Lease as aforesaid) shall have effect under that section for a term exceeding fourteen years save with such consent as aforesaid, but a lessee shall not be concerned to see that such consent has been given].

No. 40.

Statutory powers of Mortgagor and Mortgagee to grant Leases extended.(*o*)

THE powers of leasing conferred on a Mortgagor and Mortgagee by the Law of Property Act, 1925, shall be varied and extended in the following particulars—

Streets, gardens, squares, &c., authorised.

(i) Every Building Lease may authorise any part of the property to be laid out for streets, roads, paths, squares, gardens and other open spaces, sewers, drains and watercourses, either to be dedicated to the public or not, with fences, pavings, connexions and other works incidental thereto respectively.

Mining leases.

(ii) A Lease may be granted for mining purposes (including any ancillary rights as defined in the Mines (Working Facilities and Support) Act, 1923) in the same manner and for like terms in all respects as a Mining Lease may, under the Settled Land Act, 1925, be granted by a tenant for life in possession of land; and agreements for Mining Leases so authorised may be made in a similar manner.

No. 41.

All Leases under statutory power as extended to be approved by Mortgagee's solicitor.

PROVIDED that no Lease shall be granted by the Borrower under the statutory power as hereby extended unless the same shall have been first approved by the solicitors for the time being of the Mortgagee[s] at the expense of the Borrower, and such approval shall be deemed to be sufficiently testified by a memorandum thereof endorsed on the Lease or written at the

(*n*) In a building lease granted under the statutory provisions a nominal rent may be reserved for the first five years: sub-s. 10. Under mortgages made after 1925, occupation and agricultural leases may be granted for fifty years, building leases for a term not exceeding 999 years.

(*o*) See L. P. Act, 1925, s. 99 (14).

foot of the draft or any copy of the Lease, and signed by or on behalf of any persons or firm for the time being acting as solicitors of the Mortgagee[s].

No. 42.
Power for tenant for life of mortgaged property to exercise Settled Land Act powers of leasing.(*p*)

(1) THE Borrower or other the person or persons for the time being having under the recited Vesting Deed [*or* Vesting Assent] or any subsequent vesting instrument the powers of a tenant for life in possession under the Settled Land Act, 1925, may with respect to the property hereby charged [*or* demised], and while in possession, exercise all the powers of leasing (including the power of granting Mining Leases) and agreeing to lease and of accepting surrenders of leases conferred by the said Act (as extended by the vesting instrument), and the powers of leasing and of accepting surrenders conferred on a mortgagor by the Law of Property Act, 1925, shall be varied and extended accordingly:

(2) PROVIDED that the Borrower or other the person or persons for the time being entitled to exercise the powers of leasing and accepting surrenders hereby conferred shall furnish to the Mortgagee[s] or the persons deriving title under him [them] yearly on the —— day of —— in every year a statement in writing giving the short particulars of all Leases granted or surrendered and agreements for Leases entered into during the preceding year.

(3) THE delivery of such yearly statement shall be deemed to be a sufficient compliance with the provisions of the said Act, with reference to the delivery of counterparts,(*q*) save that the Borrower or the persons deriving title under him shall on a sale by the Mortgagee[s] or the persons deriving title under him [them] or at any other time when the right of redemption is barred or a Receiver is appointed or possession is taken be bound on demand to hand over all counterparts of leases and tenancies affecting the property.

No. 43.
Restriction on leasing powers of Borrower.

So long as any money remains due on this security the Borrower or the persons deriving title under him shall not, without the consent in writing of the Mortgagee[s] or the persons deriving title under him [them] lease or agree to lease the property hereby charged [demised] or any part thereof for any term

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(*p*) This Form is intended for insertion in a mortgage of the settled land, where the value of the minerals has not been taken into account for the purposes of the security.

(*q*) See L. P. Act, 1925, s. 99 (11), respecting counterparts; as to the power to have the deeds handed over: *ib.*, s. 106 (4). Counterparts.

exceeding twenty-one years, nor otherwise than at the best rent to be reasonably obtained without taking a fine, but it shall not be necessary to express such consent in any such Lease or Agreement, nor shall any lessee be concerned to see that any such consent has been given.

No. 44.
Extension of power to accept surrenders of leases.(*r*)

FOR the purposes of this deed the powers conferred by section one hundred of the Law of Property Act, 1925, shall be exercisable free from the restrictions imposed by sub-section (5) of that section.(*r*)

No. 45.
Extension of powers of L. P. Act, 1925, to mortgage made before 1926.

THE powers conferred by the Law of Property Act, 1925, in regard to mortgages made after the commencement of that Act shall extend and apply to the recited Mortgage in like manner as if that Mortgage had been executed after the commencement of that Act.

No. 46.
Power for Mortgagee to reserve a rentcharge on a sale.(*s*)

(1) FOR the purposes of this deed section one hundred and one of the Law of Property Act, 1925, shall have effect as if the following powers and provisions had been included therein (namely)—

(i) A power to sell the mortgaged property or any part thereof (with or without any mines or minerals) in consideration wholly or partially of a perpetual rentcharge payable yearly, half-yearly or otherwise, and to be secured on the land sold or an adequate part thereof :

(ii) The rentcharge to be reserved on any such sale shall be the best that can be obtained, regard being had to any money paid as part of the consideration or laid out or to be laid out by the purchaser on the land sold, and generally to the circumstances of the case, but a peppercorn or nominal or other rentcharge less than the rentcharge ultimately payable, may be made payable during any period not exceeding five years from the date of the conveyance.

[Clause to be used where the original mortgage is by demise.]

[(2) WHERE a sale is made in consideration (wholly or in part) of a rentcharge, the following provisions shall have effect—

Power to accept surrenders of leases.

(*r*) This section meets the decision in *Robbins* v. *Whyte* [1906], 1 K. B. 125 ; 75 L. J. K. B. 38 ; care must be taken that the provisions of the section are complied with.

(*s*) This Form may be useful in the North of England and in Bristol to enable the land to be sold in consideration of a rentcharge, leaving the latter to be disposed of later. As to reservations : L. P. Act, 1925, s. 65 ; as to the mortgagor taking the benefit of the covenant to pay, though not named as a party to the conveyance : *ib.*, s. 56. As to the owner of the fee simple subject to a perpetual rent having a legal estate : 70 Sol. J. 337.

Legal estates subject to rentcharges.

(i) The rentcharge shall be reserved to the mortgagee for a term of 3,000 years without impeachment of waste, subject to cesser on redemption of this mortgage, and shall become subject thereto in like manner as if it had formed part of the original security and may be dealt with accordingly :

(ii) Subject to the said term the rentcharge shall be reserved in fee simple to the Borrower or other person entitled to the ultimate right of redemption in fee simple, but without prejudice to the right of the mortgagee to dispose of the fee simple under his power of sale, or to acquire the same on foreclosure or under the Limitation Acts :

(iii) The conveyance shall contain a covenant by the purchaser with the Mortgagee and also with the Borrower to pay the rentcharge (with or without any other covenants respecting repairs and user) and may contain any powers (whether in addition to or modification of the statutory remedies) for the recovery of the rent or for breach of covenant or otherwise which the Mortgagee may consider expedient :

(iv) A duplicate of the Conveyance shall be executed by the purchaser and delivered to the Mortgagee.]

Clause to be used where the original security is a legal charge.

(2) WHERE a sale is made in consideration (wholly or in part) of a rentcharge, the following provisions shall have effect—

(i) The rentcharge shall be reserved in fee simple to the Borrower or other person entitled to the ultimate right of redemption in fee simple (subject to a charge by way of legal mortgage for securing payment of the principal, interest and other money hereby secured, and so that the rentcharge shall become subject to this security in like manner as if it formed part of the original security and may be dealt with accordingly ;(*t*)

(ii) (*As in* (iii) *supra.*)

(iii) (*As in* (iv) *supra.*)

No. 47.

Restrictive covenants where mortgage and

(1) THE Mortgagees hereby covenant with the Borrower and also separately with the Vendor that the Mortgagees and the persons deriving title under them shall (whether or not a land charge has been registered before the date hereof) be bound by

(*t*) Under L. P. Act, 1925, s. 65, a legal estate may be reserved, a charge by way of legal mortgage is a legal interest which is defined as a legal estate : *ib.*, s. 1 (2) (*c*) (4).

Reservation of legal estates.

conveyance are concurrent.(*u*)

the restrictive covenants by the Borrower contained in the recited conveyance [the conveyance mentioned in the —— Schedule hereto] of even date herewith :

(2) THE Vendor shall be entitled to register a land charge against the Mortgagees as well as against the Borrower in respect of the said restrictive covenants.

No. 48.

Definition clause.

IN this deed, where the context so admits, the expressions "Borrower" and "Mortgagee[s]" include the persons respectively deriving title under them.(*v*)

Joint and several covenants.

[All covenants by the Borrower herein contained shall be construed and have effect as joint and several covenants].

Restrictive covenants.

(*u*) Either the purchaser must execute the conveyance before the date fixed for completion and the conveyance must be dated when returned to the vendor, who will apply for the registration of a land charge *before* the date for completion, or the mortgagees must, as in the text, agree to be bound by the covenants. Though the covenant is made with the vendor he need not be a party: L. P. Act, 1925, s. 56.

Persons deriving title.

(*v*) Where this Form is used the words "the persons deriving title under him [them]" may be struck out of the Forms.

PART II.

PRECEDENTS OF MORTGAGES.

SECTION I.

MORTGAGES ARRANGED ACCORDING TO THE CHARACTER OF THE BORROWERS.(a)

GROUP A.—MORTGAGES BY ABSOLUTE OWNERS.

(Freeholds, Enfranchised Land, and Leaseholds, whether subject or not to Incumbrances.)

No. I.

MORTGAGE *of* FREEHOLDS *without reference to Forms.*(b) *(Legal Estate.)*

THIS LEGAL CHARGE is made (*date*), BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part and C. D., of, &c., and E. F., of, &c., (hereinafter called the Mortgagees), of the other part: WHEREAS:— Parties

(1) The Borrower is solely seised in fee simple in possession free from incumbrances of the freehold lands hereinafter described: Borrower's seisin.

(2) The Mortgagees have agreed to advance to the Borrower the sum of £ —— (out of money belonging to them on a joint account) upon having the repayment thereof, with interest as hereinafter mentioned secured in manner hereinafter appearing. NOW, in pursuance of the said agreement and in consideration of the sum of £ —— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:— Agreement for advance.

1. THE Borrower hereby covenants with the Mortgagees to pay to them on the —— day of —— next (*generally six months from date of deed*) the sum of £ ——, with interest thereon from the date hereof at the rate of £— per cent. per annum [*or* with interest thereon from the date hereof at such a rate as Covenant for payment of principal

(a) To avoid the omission of a material clause from a mortgage it is desirable to glance through the List of Forms, *supra*, p. 67. List of Forms.

(b) For explanatory notes, see notes to next precedent. If the mortgagees do not obtain the deeds, then a land charge must be registered in respect of the mortgage, unless a memorial thereof is registered in a local deeds register, the land being wholly within the jurisdiction of the local register. Registration of land charge.

after deducting income tax for the current rate for the time being will amount to interest at the net rate of £— per cent. per annum free of tax]:

and interest.

AND ALSO so long as any principal money remains due hereunder after the said —— day of —— next, to pay to the Mortgagees interest thereon at the rate aforesaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Charge by way of legal mortgage.

2. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage:

ALL THAT, &c. (*for parcels see the forms in Conveyances on Sale, in Vol. I*) with the payment to the Mortgagees of the principal money, interest and other money hereby covenanted to be paid by the Borrower.

(2) FOR the purposes of this deed the legal right of redemption ceases on the said —— day of —— 19— (*six months from date*).

Covenant to repair and insure against fire.

3. (1) THE Borrower hereby covenants with the Mortgagees that so long as any money remains due under this deed the Borrower or the persons deriving title under him—

(i) will repair and keep in good repair and will insure and keep insured all buildings upon the property hereby charged against loss or damage by fire in the joint names of the Borrower and the Mortgagees [to the full value thereof] in at least a sum equal to three-fourth parts of the amount required to rebuild the same in case of total destruction;

(ii) will pay every sum from time to time payable for keeping on foot every such insurance within seven days after the first day on which it becomes payable;

(iii) will forthwith deliver to the Mortgagees the policies of insurance;

(iv) will when required deliver to them the receipt for every sum payable as aforesaid:

PROVIDED that in default the Borrower will permit the Mortgagees to enter on the premises to effect repairs and shall repay to the Mortgagees or the persons deriving title under them every sum which may be expended by them in keeping the said buildings in good repair and insured to the amount aforesaid, with interest thereon at the rate aforesaid from the time of each payment.

Covenant to satisfy statutory right.

(2) THE covenant as to insurance hereinbefore contained shall so long as the same is duly performed be in satisfaction of the

statutory right of the Mortgagees or the persons deriving title under them to effect and keep on foot Fire Insurances.

[4. *Add Form No.* 17, *p.* 80, *supra, covenant not to register title, if desired.*]

[5. *Also definition clause, Form No.* 48, *p.* 104, *if desired.*]

IN WITNESS, &c.

No. II.

MORTGAGE *of* FREEHOLDS, VARIATIONS *for reduction of interest on punctual payment, for extending the* STATUTORY POWERS *of* LEASING *and accepting surrenders and other matters.* (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H. of, &c.] (hereinafter called the Mortgagee[s]), of the other part: WHEREAS:—

Mortgagor's seisin, &c.

(1) The Borrower is solely seised (*Form No.* 1, *p.* 68):

Preliminary clause.

(2) (*Form No.* 2A, *agreement for advance, p.* 71):

NOW, &c. (*Preliminary Clause, Form No.* 3, *p.* 72):—

Covenant for payment of principal, [further advances] and interest.

1. THE Borrower hereby covenants with the Mortgagee[s] (*continue as in Form No.* 4, *p.* 72).

[AND ALSO, &c. (*continue as in Form No.* 5, *p.* 72, *if required*).]

AND ALSO, &c. (*continue as in Form No.* 6, *p.* 73).

2. (1) THE Borrower, &c. (*continue as in Form No.* 10, *p.* 74).

Charge by by way of legal mortgage.(c)

[*Note where in the North of England or in Bristol the practice to sell in consideration of the reservation of a rentcharge, Form No.* 46, *p.* 102, *can be added here as a new clause.*]

3. (1) THE Borrower hereby covenants, &c. (*continue as in Form No.* 18, *p.* 81, *covenant to repair and to insure against fire*).

4. *Form No.* 29, *p.* 90, *or No.* 30, *p.* 91, *if required* (*reduction of interest*).

5. *Form No.* 31, *p.* 92, *if required* (*mortgage for term certain*).

6. *Form No.* 27, *p.* 89, *if required* (*mortgagees to concur in sales*).

(c) For parcels, see Conveyances on Sale, Sec. II, Vol. I.

Mortgage in consideration of marriage.

If a mortgage is to be made to trustees in consideration of a marriage, then the recitals can be adapted from the forms in Settlements (Personal), Vol. III. The trustees will agree to hold the debt on the trusts declared by the settlement of even date, and the mortgage deed will contain a power to appoint new trustees similar to the power in the settlement; this will enable separate deeds to be made when new trustees are appointed: T. Act, 1925, s. 35.

7. *Form No.* 24, *p.* 87, *or No.* 25, *p.* 88, *as to repayment by instalments if required.*

8. THE Borrower hereby covenants, &c. (*continue as in Form No.* 17, *p.* 80, *if required, as to registration*).

9. *Form No.* 37, *p.* 98, *if required* (*as to consolidation*).

10. THE powers of leasing, &c. (*continue as in Form No.* 40, *p.* 100, *if required, as to statutory powers of leasing*).

11. *Form No.* 44, *p.* 102 (*as to accepting surrenders*).

[12. *If the Borrower has purchased the property with the money advanced and given restrictive covenants, Form No.* 47, *p.* 103, *may be required.*]

[13. *Definition clause, if required, Form No.* 48, *p.* 104.]

IN WITNESS, &c.(*d*)

No. III.

MORTGAGE of ENFRANCHISED LAND. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE, &c. (*date and parties as in last Precedent*): WHEREAS :—

Title to copyholds.

(1) (*Recite title to the copyholds of the manor of —— showing that the Borrower was entitled to the customary estate of inheritance or to a perpetually renewable customary estate on* 31*st December*, 1925, *see Forms of Recitals in Conveyances on Sale, Vol. I. It is not necessary that the Borrower should have been the admitted tenant, what is essential is that he should have been the true owner*) :

Effect of Law of Property Acts.

(2) By virtue of the Law of Property Acts, 1922, 1924 and 1925, the said property became vested in the Borrower for an estate in fee simple in possession subject to the manorial incidents saved by the said Act of 1922, and to the mineral and sporting rights preserved to the lord of the said manor by that Act :

(3) (*Recite the compensation agreement* (*if any*) *showing whether or not the lord's mineral and sporting rights have been acquired or state that no compensation agreement has been entered into or notice served to ascertain the compensation as the case may require, see Forms of Recitals in Conveyances on Sale, Vol. I. If the manorial incidents have not been extinguished by compensation agreement or notice, this Mortgage must be produced within six months from date to*

Deeds handed over which relate to other properties.

(*d*) If deeds are handed to a mortgagee which relate to other property of the borrower, an acknowledgment of the right to production of the borrower should be taken under a 6*d.* stamp, for L. P. Act, 1925, s. 96, will not apply after the right of redemption is gone.

If the mortgagee does not obtain the deeds, a land charge must be registered, unless a memorial is registered.

the Steward (or to the Land Registrar if appointed in his place : L. P. Act, 1922, *s.* 129 (4)) *for endorsement and the customary payments made :* L. P. Act, 1922, s. 129.)

(4) (*Form No.* 2A, *p.* 71.) Agreement for advance.

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72) :—

1. (*Covenants for payment, Forms Nos.* 4-6, *pp.* 72, 73.) Covenants to pay.

2. (1) (*Legal Charge, Form No.* 10, *p.* 74. *If the lord's mineral and sporting rights have not been acquired these must be excepted out of the parcels, see Forms of Parcels in Conveyances on Sale in Vol. I. And in sub-s.* (1) *of the Form add*—" but subject to the manorial incidents affecting the property and saved by the Law of Property Act, 1922 " *or* " but subject to the compensation rentcharge hereinbefore mentioned " *as the case requires.*) Legal charge.

3. (*Power of attorney to extinguish manorial incidents, Form No.* 11A, *p.* 76.)

4. (*Add covenant to insure against fire and other provisions as in the last Precedent, as required.*) Covenants to insure, &c.

IN WITNESS, &c.(*e*)

No. IV.

MORTGAGE *by demise* (*f*) *of Freeholds and Enfranchised land.* (*Legal Estate.*)

THIS MORTGAGE, &c. (*date and parties as in last two Precedents*): WHEREAS :—[*Recitals as in Precs. Nos. II and III.*] Parties.

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72, *supra*) :—

1. (*Covenant to pay, Form No.* 4, *p.* 72. *Form No.* 5, *p.* 72, *further advances if required, and Form No.* 6, *p.* 73.) Covenants.

2. (*Demise of freeholds and enfranchised land, Form No.* 8, *p.* 73, *supra.*) Demise.

3. (*Proviso for cesser on redemption, Forms Nos.* 9, *also* 9A *when required, and* 9B, *p.* 74, *supra, leaving out the words in brackets at the end of Form No.* 9B *where no property has been assigned.*) Proviso for cesser.

4. (1) (*Form No.* 18, *p.* 81, *supra. Other forms can be added, see List of Forms, p.* 67, *supra, as required. If the manorial incidents have not been extinguished, add Form No.* 11A, *p.* 76 ; Covenant to insure.

(*e*) In most cases mortgagees will insist on the compensation for the manorial incidents being discharged out of the advance.

(*f*) Mortgages by demise are not recommended, for a charge by way of legal mortgage is preferable. Even if an equitable mortgage has been made, legal effect can be given thereto by a legal charge. Mortgages by demise when required.

this Mortgage must then be produced to the Steward within six months for endorsement and the customary payments made. Register a land charge if the deeds are not obtained.)

IN WITNESS, &c.

No. V.

MORTGAGE *of* LEASEHOLDS *without reference to* FORMS. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made the —— day of —— 19—, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part and C. D., of, &c. and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Lease.

(1) By a Lease dated, &c., and made between X. Y. of the one part and the Borrower of the other part ALL those pieces of land situated in the parish of —— in the county of —— Together with the buildings erected thereon or on part thereof and known as —— were demised to the Borrower for the term of —— years from the —— day of —— at the yearly rent of £— and subject to the lessee's covenants (including a covenant to keep the premises insured against loss or damage by fire in the sum of £—) and the conditions therein contained:

Agreement for loan.

(2) The Mortgagees have agreed to advance to the Borrower the sum of £— (out of money belonging to them upon a joint account) upon having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing. NOW, in pursuance of the said agreement and in consideration of the sum of £— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows:—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants with the Mortgagees to pay to them on the —— day of —— next (*generally six months from the date of deed*) the sum of £— with interest thereon from the date hereof at the rate of £— per cent. per annum [*or* with interest thereon from the date hereof at such a rate as after deducting income tax at the current rate for the time being will amount to interest at the net rate of £— per cent. per annum free of tax]:

AND ALSO so long as any principal money remains due hereunder after the said —— day of —— next, to pay to the Mortgagees interest thereon [as well after as before any judgment may be obtained hereunder] at the rate aforesaid by equal

half-yearly payments on the —— day of —— and the —— day of —— in every year.

2. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage: Charge by way of legal mortgage.

ALL the premises comprised in and demised by the recited lease:

WITH the payment to the Mortgagees of the principal money, interest and other money hereby covenanted to be paid by the Borrower:

(2) FOR the purposes of this charge the legal right of redemption ceases on the said —— day of ——, 19— (*six months from date*).(*g*)

3. THE Borrower hereby covenants with the Mortgagees that the Borrower and the persons deriving title under him will at all times during the continuance of this security keep the buildings comprised in the recited Lease insured against loss or damage by fire in the sum of £—— at least in conformity with the covenant for that purpose contained in the recited Lease, and will pay all premiums payable in respect of such insurance within seven days after the same shall become due, and will on demand produce to the Mortgagees or the persons deriving title under them the policy of such insurance and the receipt for every premium payable in respect thereof. Covenant by Borrower to keep premises insured according to covenant in lease.

[4. *If desired add Form No.* 17, *p.* 80, *supra, covenant not to register title to the land, and other special clauses, including Form No.* 11, *p.* 75, *where part of the demised land is mortgaged and the rent has not been legally apportioned.*]

IN WITNESS, &c.

No. VI.

MORTGAGE *of* LEASEHOLDS *by* SUB-DEMISE.(*h*) (*Legal Estate.*)

THIS MORTGAGE is made, &c., BETWEEN A.B., of, &c. Parties.

(*g*) No power of attorney or other provisions are required for getting in the head term, for when the mortgagees sell, foreclose or acquire a title under the Limitation Acts, they can convey or acquire the head term. Only when *part* of the premises comprised in a lease are mortgaged, and the rent (if any) has not been legally apportioned, will it be necessary to use Form No. 11, p. 75, *supra*, to enable the head term to be conveyed or acquired. Power of attorney as respects the head term.

If the deeds are not obtained, register a land charge, unless the land, being wholly within a register county, a memorial is registered in the local deeds registry.

(*h*) It is impossible after 1925 to mortgage leaseholds by assignment, nor is it recommended that mortgages by sub-demise should be used, for a charge No mortgages by assignment.

(hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part : WHEREAS :—

Recital of lease.

(1) By a Lease, dated, &c. (*continue as in Form No.* 28, *Conveyances on Sale, Vol. I, and recite shortly the covenant to insure against fire*) :

Agreement for advance.

(2) (*Form No.* 2A, *p.* 71, *supra.*)

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72, *supra*):—

Covenant to pay principal [further advances] and interest.

1. THE Borrower hereby covenants, &c. (*continue as in Form No.* 4, *p.* 72) :

[AND ALSO, &c. (*continue as in Form No.* 5, *p.* 72, *if required*)] :

AND ALSO, &c. (*continue as in Form No.* 6, *p.* 73).

Sub-demise of leaseholds by way of mortgage.

2. THE Borrower, As Beneficial Owner, hereby demises, &c. (*continue as in Form No.* 12, *p.* 77).

Proviso for cesser.

3. (*Add Form No.* 9, *also No.* 9A (*further advances, if required*) *and Form No.* 9B, *leaving out the words in square brackets at the end referring to property assigned. Form No.* 11 *relating to getting in the head term is only required where part of the premises comprised in a lease are mortgaged and the rent has not been legally apportioned.*)

4. (*Add Form No.* 18, *p.* 81, *or if the covenant* (*i*) *in the lease is sufficient, use the covenant contained in clause* 3 *of the last Precedent.*)

5. (*Add, if required, Forms Nos.* 24 *or* 25, *payment by instal-*

Mortgages by sub-demise not recommended.

by way of legal mortgage gives the same security and remedies ; moreover, it is a simpler form. Even where an equitable mortgage by sub-demise (*e.g.*, a mortgage by portion trustees) has to be made legal, effect can be given thereto by a legal charge. Where a new term is reserved it may then be expedient to reserve a sub-term to the mortgagee and the head term to the mortgagor, but a legal charge can be reserved. Where a licence to sub-demise by way of mortgage is required, this must not be unreasonably refused : L. P. Act, 1925, s. 86 (1). As a rule, a licence to create a legal charge will not be required, but where it is the same rule, in effect, applies, for the intending mortgagor could insist on mortgaging by sub-demise if a licence therefor were unreasonably refused ; it would thus be useless for the lessor to refuse to authorise a charge when the transaction could be effected in another way.

Land charge.

If the deeds are not obtained by the mortgagees, a land charge must be registered, unless the whole of the land is within a register county and a memorial is registered.

Reason for inserting covenant as to insurance though covenant to observe lessee's covenants is implied.

(*i*) An express covenant as to insurance may at first sight appear superfluous having regard to L. P. Act, 1925, s. 76 (1) (D) ; but the express covenant enables the mortgagee to require evidence from time to time that an insurance is being kept on foot, which, it is apprehended, he would not have the right to require under the implied covenants. It moreover fits in better with the provisions as to insurance contained in ss. 101 and 108 of the Act.

ments, pp. 87, 88, *or No.* 29, *p.* 90, *as to reduction of interest and any other special forms if required.*)

6. (*Add Form No.* 17, *p.* 80, *against registration of title, if desired.*)

IN WITNESS, &c.

No. VII.

MORTGAGE *of* FREEHOLDS, ENFRANCHISED LAND *and* LEASEHOLDS, *registered under the* LAND REGISTRATION ACT, 1925,(*j*) *subject or not to prior incumbrances or unextinguished manorial incidents.* (*Legal Estate.*)

H. M. Land Registry.

Land Registration Act, 1925.

District
Title No.
Property

(Date) In consideration of —— pounds (£——) (the receipt of which is hereby acknowledged), I, A. B., of, &c. (hereinafter called the Borrower), hereby, As Beneficial Owner, charge [by way of legal Mortgage] the land comprised in the title above referred to [*or*, the land edged red on the plan hereto, part of the land comprised in the title above referred to] [*or where the land is about to be registered under the compulsory provisions leave the title No. blank, and substitute for the reference to the title above referred to:* "the land comprised in a conveyance dated, &c., and made, &c., accompanying

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(*j*) See notes to Form No. 45 in the L. R. R., 1925; also preliminary note to Mortgages, *supra*. A mortgage of registered land can be taken in almost any form. For the reasons given in the preliminary note, a mortgage off the register under L. R. Act, 1925, s. 106, is not recommended. Policies and other property can be included in the charge. If desired, the registrar will allow the original charge to be bound up with the charge certificate, and will keep an office copy at the Land Registry; thus the charge need not be taken in duplicate. Latitude in form.

No recitals are required. The implied covenants for title take effect subject to prior incumbrances, &c., L. R. R., 1925, r. 77, and to the "over-riding interests" (L. R. Act, 1925, s. 70), of which the purchaser has notice, and subject to which he would have taken (*e.g.*, tithe rentcharge, &c.), if the title had not been registered: *ib.* Covenants for title.

Covenants to pay principal and interest and to observe lessee's covenants are implied by L. R. Act, 1925, s. 28. If the mortgage is made subject to a rent-charge the covenant will be implied under L. P. Act, 1925, 2nd Sch., Pt. IV, by using the words "As Beneficial Owner." For indemnity.

this charge "] with the payment to C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees) on the —— of —— 19—, of the principal sum of £—— with interest at —— per cent. per annum payable half-yearly [quarterly] on the —— of —— [and] the —— of —— [the —— of —— and the —— of ——] in every year [*add, if the Mortgage is to secure further advances:* And of every sum hereafter advanced by the Mortgagees with interest at the rates aforesaid payable on the appointed days and computed from the time of advancing the same.]

AND it is hereby declared that the following provisions shall apply to this Charge—

1. (*Add any of the foregoing Forms from and including No.* 11 *onwards, see List, pp.* 67, 68, *supra, which are applicable to the transaction, save the following, which do not apply to or can seldom be required for registered land, namely No.* 12 (*sub-demise not required, the charge operates as a charge by way of legal mortgage*), *No.* 15 (*proceeds of sale, this relates to a minor interest and the Mortgage would be taken off the register*), *No.* 17 (*not to register*), (*and Nos.* 32-33 (*relate to minor interests*).) *As to making use of Form No.* 37 (*consolidation*), *see L. R. R.*, 1925, *r.* 154.)

SIGNED, SEALED and DELIVERED by the said A.B. in the presence of }

No. VIIa.

MORTGAGE *of* LEASEHOLDS *formerly held for* LIVES, *and perpetually renewable converted into* LONG TERM.(*k*) VARIATIONS *where the Property is subject to* UNDERLEASES. (*Legal Estate.*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part: WHEREAS:—

Lease for lives. (1) By a Lease dated, &c., and made between L. M. of the one part, and the Borrower of the other part: ALL, &c. (*set out parcels as described in Lease*), were granted by the said

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Conversion into mortgages by sub-demise. (*k*) See L. P. Act, 1922, 15th Sch., as amended by L. P. (Amend.) Act, 1924; also as respects the conversion of mortgages formerly affecting the perpetually renewable interest into mortgages by sub-demise of the statutory long term: L. P. Act, 1925, 1st Sch., Pt. VIII, para 6. For registered land see last Precedent and notes thereto.

L. M. unto the Borrower, his heirs and assigns for the lives of X. and Y. (both of whom were living on the 1st January, 1926) and of the survivor of them at the yearly rent of £——, and subject to the covenants by the lessee and the conditions by and in the recited Lease reserved and contained; And the said Lease contained a covenant by the said L. M. that he or the persons deriving title under him would after the death of one of them the said X. and Y. and at any time within sixty days after the death of the survivor of them (but subject to the payment of the fine and costs therein mentioned) grant a new lease to the Borrower or the persons deriving title under him for not more than two lives, but so that every lease by way of renewal should contain a similar covenant for renewal to the intent that subject to the payment of the requisite fine and costs within the periods authorised the leasehold interest should be perpetually renewable:

Effect of Law of Property Act, 1922.

(2) By virtue of the Law of Property Act, 1922, 15th Schedule (as amended), the premises comprised in the said Lease became vested in the Borrower for a term of 2,000 years from the date of the commencement of the interest created by the recited Lease and the fee simple expectant on the said term remained vested in the said L. M.:

Endorsement on Lease.

(3) As appears from an endorsement dated —— 1926, and signed by the said L. M. and the Borrower it was agreed that the additional rent commencing from the 1st January, 1926, payable under the said Act should be the yearly sum of £——, and should be paid on the same days on which the original rent reserved by the said Lease was made payable, making with that rent the yearly aggregate rent of £——:

Filing of Lease.

(4) The said Lease has been filed at the Central Office pursuant to the said Act, and the rules made thereunder, and an office copy thereof (*l*) with the said endorsement has been issued to the Borrower:

Agreement for advance.

(5) (*Form No.* 2A, *p.* 71):

Preliminary clause.

NOW, &c. (*Preliminary clause, Form No.* 3, *p.* 72):—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants, &c. (*continue as in Form No.* 4, *p.* 72):

AND ALSO, &c. (*continue as in Form No.* 6, *p.* 73).

Land charge.

(*l*) If the original is not handed over, it will be expedient to register a land charge in respect of the mortgage, though the office copy is evidence for all purposes. Registration of a memorial in Middlesex or Yorkshire takes the place of a land charge.

Charge by way of legal mortgage.

2. (*Form No.* 10, *p.* 74, *supra; adding, if required, in sub-s.* (1) *of that form,* "but subject to and with the benefit of the Underleases mentioned in the Schedule hereto so far as (*m*) the same may be subsisting but not so as to confirm any voidable underlease." *The rest of the Prec. will be the same as in ordinary mortgages of leaseholds, see Precs. Nos. V and VI, supra.*)

IN WITNESS, &c.

THE SCHEDULE.

Particulars of Underleases affecting the property.

Date of Underlease.	Parties.	Short Description of Property Demised.	Term.	Yearly Rent.

No. VIII.

MORTGAGE *of* FREEHOLDS, ENFRANCHISED LAND, *and* LEASEHOLDS. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part: WHEREAS:—

Seisin of Borrower.

(1) (*Recite the seisin of the Borrower in the freeholds in the First Schedule*):

Former title to copyholds.

(2) (*Recite the title of the Borrower, showing that he was the true owner whether or not on the court rolls of the copyholds of the Manor of——, mentioned in the Second Schedule on* 31*st December*, 1925, *and that he accordingly became entitled to the fee simple under the Law of Property Act*, 1922);

Compensation agreement extending to mines and sporting rights.

(3) By a Compensation Agreement, bearing even date with but executed before this deed, and made between X., the lord of the said manor of the one part, and the Borrower of the other part, pursuant to the Law of Property Act, 1922, it was agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of the said Act affecting the lands mentioned in the Second Schedule hereto and of the

Confirmation of Leases.

(*m*) Having regard to L. P. Act, 1925, s. 65 (2), relating to informal reservations, care should be taken not to confirm an underlease after the right of re-entry has become exercisable.

rights of the lord in or to any mines and minerals in or under the said lands and the sporting and other rights preserved by the Twelfth Schedule to that Act should be the gross sum of £——:

(4) By a receipt of even date herewith (endorsed on the said Compensation Agreement) the said X. acknowledged that all rents, fines, reliefs, heriots and fees payable in respect of the lands mentioned in the Second Schedule hereto had been duly discharged and also acknowledged the receipt of the compensation money aforesaid and all interest (if any) due thereon :(*n*)

Endorsed receipt.

(5) (*Recite Lease of the property in the Third Schedule with any assignment necessary to shew that it has become vested in the Borrower.*)

Lease.

(6) (*Form No.* 2A, *p.* 71) :

Agreement for advance.

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72):—

Preliminary clause

1. THE Borrower hereby covenants (*continue as in Form No.* 4, *p.* 72) :

Covenant to pay principal and interest.

AND ALSO (*continue as in Form No.* 6, *p.* 73).

Charge by way of legal mortgage.

2. (*Add Form No.* 10, *p.* 74, *which is applicable to the freeholds, enfranchised land and leaseholds. If the lord's mineral and sporting rights have been acquired under the compensation agreement there will be no exception to be made in the parcels secondly described, nor if the compensation is paid in a lump sum will the charge be made subject to a compensation rentcharge.*)

Covenant to insure.

3. (*Add Form No.* 18, *p.* 81, *and any of the other forms according to the terms on which the loan is made.*)

IN WITNESS, &c. (*Add the three Schedules.*)

No. IX.

MORTGAGE *of* FREEHOLDS.(*o*) SUBJECT TO ONE OR MORE PRIOR MORTGAGES. (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D.,

Parties.

(*n*) It is assumed that the compensation money is paid out of the money advanced and that the mortgagees stipulate, as will be usual, that it should be paid in a lump sum, and that such of the lord's rights as he is willing to dispose of should be included in the compensation agreement. For registered land see Prec. No. VII, *supra*.

(*o*) The risks which attended an advance before 1925 on a second or subsequent mortgage have, for practical purposes, been removed. The first mortgagee should have the deeds; it should be seen that this is so. As regards second and subsequent legal mortgages an official certificate should be obtained of search against the intending mortgagor at the Land Registry for land charges, or if the land is in a register county for memorials. There will be

Risk attending a second mortgage removed.

of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part: WHEREAS:—

First mortgage.

(1) By a Mortgage dated, &c., 1925, and made between the Borrower of the one part, and L. M. of the other part, the lands hereinafter described were conveyed by the Borrower unto and To the Use of the said L. M. in fee simple, subject to a proviso for redemption on payment by the Borrower to the said L. M. of the sum of £500, with interest thereon as therein mentioned:

Conversion into term mortgage.

(2) By virtue of the Law of Property Act, 1925, the property comprised in the recited Mortgage became vested in the said L. M. for a term of 3,000 years without impeachment of waste, but subject to cesser on redemption and subject to the said term the said property became vested in the Borrower for an estate in fee simple in possession:

That principal sum remains due on first mortgage.

(3) The said principal sum of £500 and the current interest thereon still remains owing on the security of the recited Mortgage.

Variation where there are two or more prior mortgages.

[(1) The Borrower is seised in fee simple in possession of the properties described in the First Schedule hereto subject to the Mortgages mentioned in the Second Schedule hereto and to the principal money and interest thereby secured, but otherwise free from incumbrances:

(2) The respective principal sums set opposite the description of each mortgage in that Schedule remain owing on the said securities with the current interest thereon.]

Agreement for advance.

(4) (*Add Form No.* 2A, *p.* 71, *supra.*)

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72):—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants, &c. (*continue as in Form No.* 4, *p.* 72):

AND ALSO, &c. (*continue as in Form No.* 6, *p.* 73).

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but few equitable mortgages (save by deposit) and these should be disclosed when made after 1925 by the search for land charges. If the intending legal mortgagee does not have notice of an equitable mortgage he will, provided that the equitable mortgagee does not have the deeds, take free therefrom. No tacking, except for the purposes of further advances, is allowed after 1925. The intending mortgagee must ascertain what is owing on each prior mortgage and must see that a prior mortgagee is not under any obligation to make further advances. He must, besides registering a land charge, or, if all the land is in a register county, a memorial, give express notice in writing to each of the prior mortgagees, though the registration of the land charge or memorial operates as notice. It is true that if the puisne mortgage is made before 1926 the mortgagee thereunder is not obliged to register a land charge, but if he does not it will remain, in effect, an equitable mortgage and be liable to be postponed: L. P. Act, 1925, 1st Sch., Pt. VII, para. 6. For registered land see Prec. No. VII, *supra.*

Land charge and notice.

2. (1) (*Form No.* 10, *p.* 74, *adding in sub-clause* (1), "but subject to the recited Mortgage and the principal money and interest thereby secured," *or, if there are two or more prior mortgages,* "but subject to the Mortgages mentioned in the Second Schedule hereto and to the principal money and interest secured by each of those mortgages.") Charge by way of legal mortgage.

[3. *Add Form No.* 18, *p.* 81, *and other special clauses as required.*]

IN WITNESS, &c.

THE [FIRST] SCHEDULE.

Particulars of the Property hereby charged.

Number on Plan.	Description.	Tenant (if any).	Acreage.

THE SECOND SCHEDULE.

Particulars of Mortgages having priority to this Charge.

Date	Names of present Mortgagees.	Principal remaining owing.	Rate of Interest.

No. X.

MORTGAGE *with the* CONCURRENCE *of a* PRIOR MORTGAGEE, *who* POSTPONES *his* MORTGAGE.(*p*) (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN L. M., of, &c. (hereinafter called the First Lender), of the 1st part, A. B., of, Parties.

(*p*) The postponement of a mortgage implies an indemnity by the mortgagor in favour of the mortgagee whose security is postponed: *Ex p. Ford* (1885), 16 Q. B. D. 305; 55 L. J. Q. B. 406, and see *Kruger* v. *Moel, &c., Co.* [1907], A. C. 272; 76 L. J. K. B. 985. As to postponing a mortgage debt though affected by a trust: L. P. Act, 1925, s. 113; and see T. Act, 1925, s. 15. Implied indemnity. Power to postpone a trust debt.

As to registered land Prec. No. VII, *supra,* will apply (the parties being defined) and the following clause must be added after the Charge and before the words: "It is hereby declared" "And I, the First Lender, hereby declare that the Charge No. ——, dated ——, and registered ——, of which I am the registered proprietor, is hereby postponed so far as regards the property hereby charged to the Charge hereby made." Variation for registered land.

No declaration of trust is required: L. R. Act, 1925, ss. 34–35. An application should be made to note the alteration of priority in the register.

&c. (hereinafter called the Borrower), of the 2nd part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the 3rd part: WHEREAS:—

Prior mortgage.

(1) and (2) By Mortgage dated, &c. (*continue recital of Mortgage in fee of the property to be charged and of other property from the Borrower substituting* "the First Lender" *for the said* "L. M." *and the conversion into a term Mortgage as in last Precedent*):

State of mortgage debt.

(3) The said principal sum of £——, &c. (*continue recital as in last Precedent*):

Agreement for advance.

(4) (*Form No.* 2A, *p.* 71):

Agreement by First Lender to postpone his security.

(5) The First Lender (being satisfied with the security which will remain after the execution of this deed) has agreed to postpone his aforesaid security to the security intended to be hereby made in manner hereinafter appearing:

Preliminary clause.

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72):—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants, &c. (*continue as in Form No.* 4, *p.* 72):

AND ALSO (*continue as in Form No.* 6, *p.* 73).

Charge by way of legal mortgage, the first mortgage being postponed.

2. (1) The Borrower, As Beneficial Owner, with the concurrence of the First Lender hereby charges by way of legal mortgage and in priority to the recited Mortgage:

ALL, &c. (*parcels* being a part of the property comprised *in the recited mortgage*) with the payment to the Mortgagee[s] of the principal money, interest and other money hereby covenanted to be paid by the Borrower:

(2) For the purposes of this deed the legal right of redemption shall cease on the said —— 19— (*six months from date*):

(3) The First Lender, As Mortgagee, declares that the security created by the recited Mortgage is hereby postponed so far as regards the property hereby charged to the charge hereby made [*if the first mortgage is, as in the text, a term mortgage, add* "and that if the statutory power of sale incident to this charge is exercised or the right of redemption hereunder is barred by foreclosure or under the Limitation Acts, he or the persons deriving title under him will as respects the premises wherein the right of redemption may be so barred stand possessed of the term subsisting under the recited Mortgage in trust that the same shall merge or be extinguished as a satisfied term].

Prior mortgage to take effect as a second mortgage.

3. THE Borrower and the First Lender hereby agree that, subject to the security hereby made, the recited Mortgage and all powers and provisions therein contained shall remain in full force.

4. *Covenant to insure Form No.* 18, *p.* 81. [*Add any special clauses required.*]

5. THE First Lender hereby acknowledges the right of the Mortgagee[s] to production of the documents mentioned in the Schedule hereto (*q*) and to delivery of copies thereof. Acknowledgment of right to production.

IN WITNESS, &c. (*Add Schedule of documents.*)

No. XI.

MORTGAGE *of* FREEHOLDS *to secure the* RE-TRANSFER *of* STOCK, *and the* PAYMENT *in the meantime of* INTEREST, *equal to the* DIVIDENDS *thereof.*(*r*) (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:— Parties.

(1) The Borrower is seised in fee simple in possession free from incumbrances of the property hereinafter described: Seisin of Borrower.

(2) The Mortgagees have agreed to advance to the Borrower the sum of £—— (being the net proceeds of the sale of a sum of £—— War —— per cent. Stock, recently standing in the names of the Mortgagees in the books of the Governor and Company of the Bank of England), upon having the transfer of a like sum of stock and the payment in the meantime of an annual sum in lieu of dividends secured to them in the manner hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the sum of £—— (the proceeds of the sale of the said stock) Agreement for advance of proceeds of War Stock.

(*q*) As the first mortgagees will not presumably obtain all the deeds relating to the property, they must register a land charge: L. C. Act, 1925, s. 10, Class C (i), or a memorial if the land is in a register county. Puisne mortgages, *i.e.*, mortgages not protected by the deeds, rank according to date of registration: L. P. Act, 1925, s. 97. Where the mortgagee, who joins to postpone, does not hand over the deeds, a memorandum of the postponement should be endorsed on his mortgage. If he hands over the deeds, his security must be protected by registration. Land charge.

(*r*) The provisions relating to mortgages in the L. P. Act, 1925, including the statutory power of sale, apply to a mortgage to secure stock, which is included in the expression "money's worth," see s. 205 (1) (xvi). L. P. Act, 1925, applies to a mortgage to secure stock.

Trustees cannot invest on stock mortgages unless expressly authorised: *Whitney* v. *Smith* (1869), L. R. 4 Ch. 513; *Bromley* v. *Kelly* (1870), 39 L. J. Ch. 274.

For registered land Prec. No. VII, *supra*, should be adapted. The provision in L. R. Act, 1925, s. 28 (1), should be made to apply to the stock to be transferred, and to the interest to be paid equal to the dividends. Registered land.

now paid by the Mortgagees to the Borrower (*the receipt, &c.*), THIS DEED WITNESSETH as follows :—

Covenant by Borrower to transfer stock, and to pay in the meantime sums equal to dividends.

1. THE Borrower hereby covenants with the Mortgagees to transfer, or cause to be transferred, into the names of the Mortgagees in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— War — per cent. Stock, and in the meantime (as well after as before any judgment may be obtained hereunder) and until such transfer to pay to them such money as shall be equal in amount to the dividends which the Mortgagees would have been entitled to receive on account of the said stock, if the same had continued standing in their names, such payments to be made at such times as the said dividends would have become payable.

Legal charge.

2. (1) The Borrower, As Beneficial Owner, hereby charges by way of legal mortgage :

ALL, &c. (*parcels*)

WITH the payment to the Mortgagees of principal money of such an amount as may be required to purchase the said stock and pay the costs of transfer and of interest equal to the dividends aforesaid and other money hereby covenanted to be paid by the Borrower :

(2) For the purposes of this Charge the legal right of redemption shall cease on the said ——, 19— (*six months from date*).

3. *Covenant to insure Form No.* 18, *p.* 81. [*Add any special clauses required.*]

IN WITNESS, &c.

No. XII.

MORTGAGE *of* FREEHOLDS *to secure the* RE-TRANSFER *of* STOCK *lent and* PAYMENT *of* INTEREST *on* PROCEEDS *in the* MEANTIME.(*s*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part : WHEREAS :—

(1) (*Seisin of Borrower as in last Precedent*) :

Seisin of Borrower.

Agreement for advance.

(2) The Mortgagees have agreed to advance to the Borrower the sum of £—— (being the net proceeds of the sale of a sum of £—— War —— per cent. Stock lately standing in the names of the Mortgagees in the books of the Governor and Company of the Bank of England), upon having a transfer of a like sum of stock,

(*s*) See note to last Precedent.

and the payment in the meantime of interest on the said sum of £—— secured to them in manner hereinafter appearing:
NOW, &c. (*Preliminary clause, Form No.* 3, *p.* 72):—

Covenant to transfer stock and to pay interest on proceeds.

1. THE Borrower hereby covenants with the Mortgagees to transfer or cause to be transferred into the names of the Mortgagees in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— War — per cent. Stock, and at the same time to pay to them interest on the said sum of £—— (*proceeds of sale of stock*), at the rate of £— per cent. per annum, from the date hereof:

AND also if the said sum of £—— War Stock shall not be transferred as aforesaid on the said —— day of —— next, then to pay to them interest (as well after as before any judgment may be obtained hereunder) at the rate aforesaid, on the said sum of £—— (*proceeds of sale*), or on such sum as shall bear the same proportion to the said sum of £—— (*proceeds of sale*) as the —— per cent. War Stock for the time being owing on this security shall bear to the said sum of £—— like stock, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year until the whole of the last-mentioned sum of £—— War Stock shall have been transferred as aforesaid.

Legal charge.

2. (1) The Borrower, As Beneficial Owner, hereby charges by way of legal mortgage:

ALL, &c. (*parcels*)

WITH the payment to the Mortgagees of principal money of such an amount as may be required to purchase the said stock and pay the costs of transfer and of interest on the said sum of cash and all other money hereby covenanted to be paid by the Borrower:

(2) For the purposes of this Charge the legal right of redemption shall cease on the said ——, 19— (*six months from date*).

(*Other clauses, as in last Precedent.*)

IN WITNESS, &c.

No. XIII.

MORTGAGE *of a* BUILDING LEASE *to secure the repayment of* SUMS *advanced and to be advanced to the* LESSEE *for the purpose of enabling him to complete several Unfinished Houses.*(*t*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c.

Mortgage of building agreement.

(*t*) For a power for S. L. A. trustees, on the direction of a tenant for life, to advance money to builders on the security of a building agreement: S. L.

(hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Building Lease to Borrower.

(1) By a Lease dated, &c., and made, &c., All that piece of land, &c. (*parcels as in Lease*), was demised to the Borrower for the term of —— years from the —— day of —— at the yearly rent[s] of £—— [and £——] and subject to the covenants by the Borrower and the conditions contained in the said Lease, and in particular to a covenant by the Borrower for the erection of buildings and executing works on the land thereby demised and otherwise as therein mentioned:

Buildings commenced.

(2) Pursuant to the aforesaid covenant the Borrower has commenced the erection of buildings on the land comprised in the recited Lease:

Agreement to lend money to complete buildings.

(3) The Borrower requires the sum of £—— for the purpose of enabling him to complete the said buildings, and has requested the Mortgagees to advance the same to him, which the Mortgagees have agreed to do in two separate sums (that is to say), the sum of £—— immediately on the execution of this deed, and the sum of £—— if and when all the buildings erected or to be erected, pursuant to the aforesaid covenant, shall have been covered in, on having the said sums of £—— and £——, with interest thereon secured in manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the sum of £—— paid by the Mortgagees on or before the execution hereof to the Borrower (*the receipt, &c.*), and of the covenant by the Mortgagees hereinafter contained, THIS DEED WITNESSETH as follows:—

Covenant by Borrower to pay sum now advanced, and further sum when advanced,

1. THE Borrower hereby covenants with the Mortgagees to pay to them on the —— day of —— next the sum of £——, with interest thereon at the rate of £— per cent. per annum, from the date hereof:

AND ALSO to pay to the Mortgagees the money which shall be hereafter advanced by them to the Borrower pursuant to the covenant for that purpose hereinafter contained on the first

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Act, 1925, s. 73 (1) (xviii); trustees for sale have a similar power: L. P. Act, 1925, s. 28; so have personal representatives: Ad. of E. Act, 1925, s. 39, and see next Precedent.

Obligation to make advances.

For the effect of an obligation to make further advances: L. P. Act, 1925, s. 94.

Registered land.

Precedent No. VII, *supra*, can be adapted to give effect to this arrangement; as to charges to securing further advances: L. R. Act, 1925, s. 30. It can be similarly adapted where the registered land is subject to a perpetual rentcharge.

half-yearly day hereby fixed for payment of interest which happens after the date of the advance, with interest thereon at the rate aforesaid, from the date of the advance:

and to pay interest half-yearly.

AND ALSO so long as any principal money remains due hereunder after the day hereby fixed for payment thereof to pay to the Mortgagees interest thereon (as well after as before any judgment may be obtained hereunder) at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Legal charge.

2. (1) and (2) (*Form No.* 10, *p.* 74, *supra.*)

Covenant by Borrower to complete buildings, with power on default for Mortgagees to finish them.(*u*)

3. THE Borrower hereby covenants with the Mortgagees that the Borrower will before the —— day of —— complete the buildings on the property hereby charged, and all other the buildings which ought to be erected on the said land pursuant to the covenant for that purpose contained in the recited Lease, and that in case he shall neglect so to do then the Mortgagees or the persons deriving title under them may enter upon the property and complete the buildings, and that all money which they shall expend thereon, with interest thereon at the rate aforesaid from the respective times of expending the same, shall be repaid by the Borrower to them on demand, and shall in the meantime be included in the foregoing charge, with interest thereon at the rate aforesaid.

Property in such case to be a security for money expended by Mortgagees, as well as other money.

Covenant by Mortgagees to advance further sum on buildings being covered in.

4. THE Mortgagees hereby jointly and severally covenant with the Borrower that if and when all the buildings erected and to be erected as aforesaid shall be covered in and completed pursuant to the covenant contained in the recited Lease, and if up to that time all the covenants herein contained on the part of the Borrower (other than the covenant for payment of the said principal sum of £—— on the —— day of —— next) shall have been duly observed and performed, the Mortgagees shall advance to the Borrower the further sum of £——, with interest at the rate aforesaid, on the security of this Charge.

5. *Covenant to insure*, *Form No.* 18, *p.* 81.

6. *Power to appoint receiver and manager*, *Form No.* 14, *p.* 78.

7. *Provision for reduction of interest* (*continuous*), *Form No.* 30, *p.* 91.

8. *Mortgage to continue for time certain*, *Form No.* 31, *p.* 92.

Machinery and plant.

(*u*) L. P. Act, 1925, ss. 89 and 101, do not authorise a sale of machinery, &c., without the land: *Re Yates* (1888), 38 Ch. D. 112; 57 L. J. Ch. 697; an express power to sell the chattels apart from the land would be void under s. 7 of the Bills of Sale Act, 1878; but the power of sale extends to the absolute interest in the chattels: L. P. Act, 1925, s. 89 (4).

9. *Power to consolidate, if required, Form No.* 37, *p.* 98.
10. *Consent to Leases, Form No.* 38, *p.* 99.
[*Add any other special clauses, if required.*]
IN WITNESS, &c.

No. XIV.

MORTGAGE *by a* BUILDER *of a* BUILDING AGREEMENT (*v*) *entitling him to* SEPARATE LEASES *as the Houses are completed to secure* ADVANCES *to be made for completing the Houses.* VARIATION *where the Leases have to be registered under the L. R. Act*, 1925. (*Equitable Interest.*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Building agreement between freeholder and builder.

(1) Under an Agreement (hereinafter called the Building Agreement), dated, &c., and made between X. of the one part, and the Borrower of the other part, the Borrower is erecting —— houses and other buildings upon the lands mentioned in the Schedule hereto and will be entitled to a separate lease to be granted by the said X. of each of such houses respectively and the sites thereof, if and when each of such houses is completed as therein mentioned:

Agreement for loan.

(2) The Mortgagees have agreed to make advances to the Borrower from time to time in order to enable him to complete the houses and buildings on the said lands pursuant to the Building Agreement, upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

Mortgagees covenant to make advances as each house is covered in and completed.

1. (1) THE Mortgagees hereby jointly and severally covenant with the Borrower that the Mortgagees will advance to the Borrower such sums as are next hereinafter mentioned (that is to say), the sum of £—— immediately on the execution hereof, and in respect of each house built by the Borrower on the said land pursuant to the Building Agreement the further sum of £——, one moiety thereof to be advanced if and when each house shall be covered in, and the other moiety thereof if and when the same house shall be completed so as to be fit for habitation:

Assignment of benefit of building agreements.

(*v*) Generally, a building agreement does not create any term; hence the security should be taken by assignment; see S. L. Act, 1925, s. 73 (1) (xviii), for power to lend on such a security, and see note to last Precedent. If it creates a term, then the security must be taken either by legal charge or by sub-demise.

(2) PROVIDED that the Mortgagees shall not be bound to make any such further advance as aforesaid, unless and until their surveyor shall have certified in writing that the house in respect of which the advance is to be made has been covered in or completed (as the case may be) to the satisfaction of such surveyor and in conformity with the Building Agreement, and the fee of the surveyor for inspecting the house and certifying as aforesaid (not exceeding in each case the sum of £——) shall have been paid by the Borrower :

Mortgagees need not make advance until surveyor has certified that house has been properly built, &c.

(3) PROVIDED ALSO, that the Mortgagees shall not be bound to make any such advance as aforesaid, unless up to the time when such advance ought to be made under the foregoing covenant the Borrower shall have duly paid the interest on the principal money for the time being owing on this security, on the half-yearly days hereinafter fixed for payment of such interest, or within fourteen days thereafter, and shall have duly observed all the covenants by the Borrower herein contained (other than the covenant for payment of principal next hereinafter contained).

Nor unless Borrower has paid interest punctually and observed his covenants.

2. THE Borrower hereby covenants with the Mortgagees that the Borrower will repay to the Mortgagees every sum of money advanced by them hereunder on the first half-yearly day hereby fixed for payment of interest which happens after the date of each advance, with interest thereon from the date of each advance, at the rate of £— per cent. per annum, And if the principal money shall not be repaid at the times aforesaid will thenceforth (as well after as before any judgment may be obtained hereunder) pay to the Mortgagees interest on the principal money for the time being owing on the security of this deed at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of ——in every year.

Borrower covenants to repay advances

and to pay interest half-yearly.

3. IN consideration of the said sum of £—— now paid, &c. (the receipt, &c.), the Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees :

Assignment of benefit of building agreement.

ALL the lands and property comprised in the Building Agreement, and the full benefit of that Agreement,

TO HOLD unto the Mortgagees absolutely :

PROVIDED, that on payment at the time or times hereinbefore fixed for the payment of principal by the Borrower to the Mortgagees of the principal money advanced or to become due under this deed, and interest thereon at the date aforesaid from the day of the same being advanced or becoming due, the premises hereinbefore assigned shall, at the request and cost

of the Borrower, be duly reassigned to him by endorsed receipt or otherwise.

4. (*Covenant to insure, Form No.* 18, *p.* 81.)

Borrower covenants to build according to agreement, and to observe agreement.

5. THE Borrower hereby covenants with the Mortgagees that the Borrower will complete the —— houses in accordance with the provisions of the Building Agreement at the times and in the manner therein prescribed, and will pay the rents, if any, made payable by that Agreement and observe and perform all the provisions thereof.

Power for Mortgagees in certain cases to enter and complete buildings.

6. IF the Borrower—

(i) Shall make default for thirty days, in the repayment of any principal money which may have become due hereunder after payment thereof shall have been demanded ; or

(ii) Shall make default in any half-yearly payment of interest payable hereunder or any part thereof for fourteen days after the day hereby fixed for such payment ; or

(iii) Shall commit any breach of any of the Borrower's covenants herein contained (other than the covenant for payment of principal money at the times fixed for payment) ; or

(iv) Shall become bankrupt during the continuance of this security :

THEN and in any of such cases the Mortgagees may at any time thereafter enter upon and take possession of the premises hereby assigned and complete any houses or buildings thereon which may be unfinished in such manner as they may think fit, and for that purpose may use any plant or materials of the Borrower upon the property, and add the money expended in so doing, with interest thereon at the rate aforesaid, from the time of expending the same to the other principal money and interest hereby respectively secured, so as to be an additional charge on the property.

Power of sale.

7. THE power of sale conferred by the Law of Property Act, 1925, may be exercised free from the restrictions imposed by section one hundred and three of that Act.

How demand may be made.(*w*)

8. ANY demand for payment of the money hereby secured may be made by a notice in writing given to the Borrower or left at his usual or last known place of abode or business, or left upon or affixed to some part of the land comprised in the Building Agreement or some building thereon, and the provisions

(*w*) See as to implied demand, *Worthington* v. *Abbott* [1910], 1 Ch. 588 ; 79 L. J. Ch. 252. The power to sell and appoint a receiver cannot be exercised by reason only of the bankruptcy of the mortgagor, without the leave of the Court : L. P. Act, 1925, s. 110.

of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply accordingly.

Covenant to procure leases from freeholder, and to execute mortgages.

9. (1) THE Borrower hereby covenants with the Mortgagees that the Borrower will at his own expense procure from the said X. (*the freeholder*), or the persons deriving title under him, a separate Lease of each of the said houses if and when such Lease can be required in accordance with the Building Agreement, and will procure such Lease to be granted either to the Borrower or, if the right of redemption hereunder has been barred, to the Mortgagees or to their nominees as the Mortgagees may determine, and in case the Lease shall be granted to the Borrower, then he will forthwith at his expense execute and deliver to the Mortgagees a valid legal mortgage of the premises comprised therein, either by way of charge by way of legal mortgage or by sub-demise for the purpose of securing the money which shall then be owing to the Mortgagees upon this security, or such part of the said money as the Mortgagees may think fit to allocate to the premises comprised in that particular Lease, with interest thereon at the rate aforesaid :

(2) EVERY such Mortgage shall contain such powers and provisions as the Mortgagees shall reasonably require [and every Lease shall within one month from the date thereof be registered at the like expense under the Land Registration Act, 1925, with at least a good leasehold title, and the Mortgagees shall be entitled at the expense of the Borrower to require a charge to be registered under that Act contemporaneously with the first registration of the Lease, and in the meantime a caution against registration of the title to the Lease shall at the like expense be entered on the register].(*x*)

10. (*Declaration as to leasing power, Form No.* 38, *p.* 99. *Add any other special clauses required.*)

11. (*Definition Clause, Form No.* 48, *p.* 104.)

IN WITNESS, &c.(*y*)

THE SCHEDULE.

Particulars of the property comprised in the Building Agreement.

Power of attorney to accept leases and execute mortgages, &c.

(*x*) If desired, the borrower can give an irrevocable power of attorney to the mortgagees and the persons deriving title under them to execute the counterpart leases, the mortgages, and registered charges ; Form No. 11, p. 75, can be adapted. As to registering notices of a claim by virtue of the building agreement against the lessor's title : L. R. Act, 1925, ss. 48–49.

(*y*) Notice of the assignment must be given to the lessor, and it should be seen that any required licence to assign the building agreement is obtained.

No. XV.

MORTGAGE *of a* FREEHOLD MINING PROPERTY,(*z*) *with provisions extending the* STATUTORY POWERS *of* LEASING *to* MINING LEASES,—PROVISIONS *for setting apart a* PROPORTION *of the* RENTS *and* ROYALTIES *payable under the* MINING LEASES, *and* INVESTING *same in the* NAMES OF TRUSTEES *to constitute a* SINKING FUND *in aid of the* PRINCIPAL SECURITY. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c., and R. D., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Seisin of Borrower.

(1) The Borrower is seised (*Form No.* 1, *p.* 68).

Agreement for advance.

(2) (*Form No.* 2A, *p.* 71):

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72):—

Preliminary clause.

1. THE Borrower hereby covenants (*continue as in Form No.* 4, *p.* 72):

Covenant for payment of principal and interest.

AND ALSO, &c. (*continue as in Form No.* 6, *p.* 73).

Legal charge,

2. (1) *Form No.* 10, *p.* 74, *adding in sub-clause* (1), "but subject (so far as the premises are respectively affected thereby) to and with the benefit of the Mining and other Leases mentioned in the Second Schedule hereto.

Power to grant Mining Leases.

3. (*Form No.* 40, *p.* 100, *omitting sub-clause* (1) *and adding No.* 41, *p.* 100.)

4. (*Form No.* 44, *p.* 102, *Extension of power to accept surrenders of leases; add any other special clauses required.*)

Covenant by Borrower to pay one-third of rents, &c., received under Mining Leases to Trustees.

5. THE Borrower hereby covenants with the Mortgagees, and also as a separate covenant with the Trustees, that so long as the rents, royalties and other payments reserved or made payable by any Mining Lease mentioned in the Second Schedule hereto, or which shall have been granted by the Borrower

Dealings by mortgagee with the surface and minerals apart.

(*z*) A mortgage by a colliery company passes the business though not expressly mentioned: *Gloucester County Bk.* v. *Rudry, &c., Co.* [1895], 1 Ch. 629; 64 L. J. Ch. 451; *cf. Stamford* v. *Keeble* [1913], 2 Ch. 96; 82 L. J. Ch. 388. The surface may be sold under the power of sale without the minerals and mining rights, or the latter may be sold apart from the surface, and mining easements may be reserved or granted: L. P. Act, 1925, s. 101 (2) (ii).

Registered land.

This form can be adapted to registered land by adding the usual heading and referring to the title number in the parcels; an alternative would be to have two deeds with the leave of the Registrar, and merely register a charge in the prescribed form. The stamp in this case would be on the deed off the register: L. R. R., 1925, r. 94.

under the power hereinbefore contained, shall be received by the Borrower, he, the Borrower—

(i) Shall immediately upon every receipt of the same rents, royalties or other payments respectively, pay one-third part thereof to the Trustees (*a*) to be held Upon the trusts hereinafter declared concerning the same ;

To deliver statements and accounts of rents.

(ii) And shall, in order to enable the Trustees to ascertain from time to time the amount payable to them under the covenant lastly hereinbefore contained, from time to time make and deliver or cause to be made and delivered to them true and correct statements and accounts of the rents, royalties, and other payments which shall from time to time become payable under any such Lease as aforesaid ;

(iii) And shall, if so required, verify the said accounts by statutory declaration or otherwise.

Trust after paying expenses to invest money and accumulate at compound interest.

6. THE Trustees shall invest the net money received by them as aforesaid (after payment of all the costs and expenses incurred by the Trustees, or by the Mortgagees) in the names or under the control of the Trustees in any of the investments authorised by law for the investment of trust money, with power from time to time, with the consent of the Mortgagees, to vary such investments for others of a like nature, and shall accumulate the annual income of the said investments (hereinafter with the accumulations and the investments for the time being representing the same called the Trust Fund), in the way of compound interest with half-yearly rests, by investing the same and the resulting income thereof in manner aforesaid, with a like power of varying the investments thereof.(*b*)

Trust for payment of principal and interest due.

7. IF default shall be made in payment of any principal money or interest hereby secured at the respective times when the same respectively ought to be paid hereunder, then, and in any such case, the Trustees shall at the request of the Mortgagees sell, call in or convert into money all or any part of the Trust Fund and shall apply the net money arising therefrom (after payment of costs) in or towards discharge of the principal money and interest then owing upon the security hereof.

Ultimate trust for Borrower.

8. SUBJECT to the trusts aforesaid, the Trustees shall stand possessed of the Trust Fund in trust for the Borrower absolutely.

(*a*) No further definition of the trustees is required : T. Act, 1925, ss. 18, 36 (7).

(*b*) The trustees have power to deposit trust money at a bank : T. Act, 1925, s. 11.

Deposit at bank.

Power to appoint new trustees.

9. THE statutory power of appointing a new trustee in the place of the said E. F., or of any trustee appointed in his place, shall be vested in the Borrower, and the power of appointing a new trustee in the place of the said G. H., or of any trustee appointed in his place, shall be vested in the Mortgagees.

Power for professional trustees to charge.

10. ANY trustee being a solicitor or other person engaged in any profession or business, shall be entitled to be paid all usual professional or proper charges for business transacted, time expended, and acts done by him or any partner of his in connexion with the trusts hereof, including acts which a trustee not being in a profession or business could have done personally.(*c*)

11. (*Add definition clause, Form No.* 48, *p.* 104.)

IN WITNESS, &c.

(*Add two Schedules, one of the property and the other of the Mining Leases, &c.*)

No. XVI.

MORTGAGE *of* FREEHOLDS *by way of* ADDITIONAL SECURITY SUPPLEMENTAL *to the* PRINCIPAL MORTGAGE, (*d*) *where the* MONEY *is to be left for a* TIME CERTAIN. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees),

Supplemental to mortgage.

of the other part, supplemental to a Mortgage (hereinafter called the Principal Mortgage) dated, &c. (being a mortgage of freehold property at ——, in the County of ——, for securing payment to the Mortgagees of the principal sum of £5,000 and interest): WHEREAS :—

Power to employ agents.

(*c*) Trustees have power to employ agents: T. Act, 1925, s. 23.

(*d*) In this case the principal mortgage is supposed to have been made some time previously. This Precedent may be used where the mortgagee threatens to exercise his statutory powers unless further security is given. The stamp will be 6*d.* for every £100 secured by the mortgage up to 10*s.*: Revenue Act, 1903, s. 7. It should be adjudicated.

Power to give additional security.

For power for a tenant for life to give additional security: S. L. Act, 1925, s. 70. This power is also exercisable by trustees for sale and personal representatives.

Registered land.

Precedent No. VII, *supra*, can be adapted; the consideration will be referred to as money "already secured by a Charge No. —— on Title No. ——," *or if the title to the land affected by the principal security is not registered*, "already secured by a Mortgage dated," &c. The right to consolidate should be reserved. Application should be made to enter cross references between the two Charges, or a caution should be lodged against first registration of the unregistered land.

(1) The said sum of £5,000, with the current interest thereon, remains owing on the security of the Principal Mortgage : State of debt.

(2) The Borrower is seised in fee simple in possession free from incumbrances of the property hereinafter described and has agreed to mortgage the same to the Mortgagees by way of further security for the said principal sum and the interest thereon in manner hereinafter appearing : Agreement to give further security.

NOW, in pursuance of the said agreement and in consideration of the Mortgagees not requiring immediate payment of the said sum of £5,000 so remaining owing as aforesaid, THIS DEED WITNESSETH as follows :— Preliminary clause.

1. (1) THE Borrower, As Beneficial Owner, hereby charges, by way of legal mortgage : Legal charge by way of further security

ALL, &c. (*parcels referring to Schedule and plan*) with the payment to the Mortgagees and the persons deriving title under them on the —— next (*the next half-yearly date*) of the principal money secured by the Principal Mortgage with interest thereon in the meantime at the rate payable under that Mortgage :

AND also so long as any principal money remains due under this deed and the Principal Mortgage after the said —— next (*the next half-yearly date*) with the payment to the Mortgagees or the persons deriving title under them of interest thereon (as well after as before any judgment may have been obtained under this Charge or the Principal Mortgage) at the rate aforesaid on the half-yearly days fixed for payment by the Principal Mortgage.

(2) FOR the purposes of this Charge the legal right of redemption shall cease on the said —— next (*the next half-yearly date*).

(3) ALL the powers and provisions of the Principal Mortgage (as varied by the Law of Property Act, 1925) shall apply and extend to the property hereby charged in the same manner as if those premises had been included in that Mortgage.

(4) Nothing herein contained shall affect the right of redemption under the Principal Mortgage or the right to exercise the power of sale implied thereunder.

2. (*Adapt Form No.* 31, *p.* 92, *referring, where necessary, to the Principal Mortgage.*) Mortgage to remain for time certain.

3. (*Extension of powers of L. P. Act*, 1925, *to Principal Mortgage, Form No.* 45, *p.* 102.)

4. THE provisions of section ninety-three of the Law of Property Act, 1925, shall not apply to this Charge or to the Principal Mortgage. Power to consolidate.

IN WITNESS, &c. (*Add Schedule.*)

No. XVII.

MORTGAGE *of* FREEHOLDS *by way of* COLLATERAL SECURITY.(*e*) (*Legal Estate.*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. [E. F., of, &c., and G. H., of, &c.] (hereinafter called the Mortgagee[s]), of the other part: WHEREAS:—

Seisin of Borrower. (1) The Borrower is seised, &c. (*Form No.* 1, *p.* 68):

Principal mortgage deed. (2) This deed is supplemental to a Legal Charge (hereinafter called the Principal Mortgage) bearing even date with but executed before this deed, and made between the same parties as the parties hereto, whereby in consideration of the sum of £5,000 paid by the Mortgagee[s] to the Borrower, certain freehold properties in the parish of ——, in the County of ——, were charged by the Borrower by way of legal mortgage for securing the payment to the Mortgagee[s] on the —— day of —— of the principal sum of £5,000, with interest thereon at the rate of £5 per cent. per annum, payable on the —— day of —— and the —— day of —— in every year:

Agreement for further security. (3) Upon the treaty for the said advance of £5,000 it was agreed that the payment thereof, with interest, should be further secured by a mortgage of the property hereinafter described in the manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the sum of £5,000 so paid by the Mortgagee[s] to the Borrower as aforesaid (the payment whereof the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows:—

Legal charge. 1. (*As in Clause* 1 *of the last Precedent, leaving out sub-clause* (3).)

Power to consolidate. 2. THE provisions of section ninety-three of the Law of Property Act, 1925, shall not apply to this Charge or to the Principal Mortgage.

[*Add other special clauses, if required.*]

IN WITNESS, &c. (*Add Schedule of property.*)

(*e*) It is sometimes desirable to keep the titles to two estates to be included in the same security distinct by having two separate deeds. The above Precedent is adapted to such a case. The *ad valorem* stamp will be imposed on the principal mortgage. As to stamp, see note to last Precedent.

Stamp.

Registered land. In the case of charges on registered land the heading to the charge must generally refer to all the title numbers which are to be affected. If part of the land affected is unregistered, a separate mortgage of this could be taken and a collateral charge registered as respects the registered land. If all the land is registered and it is desired to take two charges, a special arrangement should be made with the Registrar.

GROUP B.—MORTGAGES BY CO-OWNERS AND MARRIED WOMEN.

No. I.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *by persons beneficially entitled to the proceeds of sale as* TENANTS *in* COMMON.(*f*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Borrowers), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

(1) (*Recite a conveyance to the Borrowers of the freeholds in First Schedule made before* 1926 *to them in fee simple as tenants in common in equal shares.*)

(2) (*Recite the Lease to be charged of the property described in the Second Schedule.*)

(3) (*Recite an Assignment made before* 1926 *of the Lease to the Borrowers in equal shares.*)

Statutory trust for sale.

(4) By virtue of para. 1 (2) of Part IV of the First Schedule to the Law of Property Act, 1925 (the Borrowers being entitled at the commencement of that Act free from any incumbrances affecting their undivided shares) the entirety of the said freehold and leasehold properties became vested in the Borrowers as joint tenants on trust to sell the same and stand possessed of the net proceeds and of the income until sale in trust for themselves in equal shares, which shares are still vested in them beneficially free from incumbrances:

Agreement for advance.

(5) The Mortgagees have agreed to advance to the Borrowers the sum of £—— upon having the repayment thereof, with

---

(*f*) This is one of the cases where the former equitable interests must come on the title to show how the property vested on 1st January, 1926. As the trustees are beneficially interested no difficulty arises in raising money for general purposes. It is assumed that there were not more than four tenants in common. For the powers of trustees for sale (who have the powers of a tenant for life: L. P. Act, 1925, s. 28) to raise money for special purposes, see S. L. Act, 1925, s. 71. *Semble*, they could, for the purpose of keeping equitable interests off the title, also make use of s. 16 (2) of that Act; in any case, where they are by law authorised to apply capital for any purpose, they have power to raise the money by mortgage: T. Act, 1925, s. 16, and where the mortgage is expressed to be made under a trust or power the mortgagee is not concerned to see that the money is wanted, &c.: *ib.*, s. 17. If there is an express power to raise money this should be made use of; in any case they must give effect to the directions of the beneficiaries: L.P. Act, 1925, sub-s. 3 (1) (ii), 26 (3).

Raising of money by trustees for sale.

For registered land, see Prec. VII, Group A, it can be stated that the covenants are to be joint and several.

Registered land.

interest as hereinafter mentioned, secured to the Mortgagees in manner hereinafter appearing :

Covenant to pay.

NOW, &c. (*Preliminary Clause, Form No.* 3, *p.* 72) :—

1. THE Borrowers hereby jointly and severally covenant with the Mortgagees (*Covenant to pay principal and interest, as in Forms Nos.* 4 *and* 6, *pp.* 72, 73).

Legal charge.

2. (1) and (2) (*Form No.* 10, *p.* 74.)

Covenant by Borrowers to insure against fire.

3. THE Borrowers hereby jointly and severally covenant with the Mortgagees that the Borrowers or the persons deriving title under them will (*Covenant for insurance against fire, Form No.* 18, *p.* 81 ; [*add other provisions as required*]).

IN WITNESS, &c.

No. II.

MORTGAGE *by* HUSBAND *and* WIFE, *married before* 1883, *of* FREEHOLDS *belonging to* WIFE, *and not being her* SEPARATE PROPERTY.(*g*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c., and E. B., his wife (hereinafter called the Borrowers), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part : WHEREAS :—

Title of wife.

(1) The Borrowers are seised in fee simple in possession in right of the said E. B. of the freehold property hereinafter described free from incumbrances :

Agreement loan.

(2) The Mortgagees have agreed to advance to the Borrowers (*continue Form No.* 2A, *p.* 71, *and substitute* "Borrowers" *for* "*Borrower*" *throughout the Precedent*) :

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72) :—

Covenant by husband to pay.

1. THE said A. B. hereby covenants with the Mortgagees (*continue Forms Nos.* 4 *and* 6, *pp.* 72, 73, *substituting* "the said A. B." *for the* "Borrower").

(*g*) See M. W. P. Act, 1882, ss. 1, 2. There is nothing in the L. P. Act, 1925, to divest the estate taken by the wife or by her husband in her right. Though he may be entitled to the income during the joint lives, there is no settlement within S. L. Act, 1925, s. 1.

No acknowledgment.

The mortgage will not have to be acknowledged by the wife : L. P. Act, 1925, s. 167.

It should be ascertained that there is no covenant for the settlement of the wife's property ; but if the mortgagee has no notice, actual or constructive, of the covenant he will not be prejudicially affected : *Lloyds Bk. Co.* v. *Jones* (1885), 29 Ch. D. 221, 230 ; 54 L. J. Ch. 931. If the wife has any separate property the first clause should be a joint and several covenant to pay ; see last Precedent. In a mortgage by husband and wife of her estate extrinsic evidence is admitted to show that the mortgage was effected for her benefit : *Hall* v. *H.* [1911], 1 Ch. 487 ; 80 L. J. Ch. 340.

2. (1) THE Borrowers, As Beneficial Owners, do and each of them, As Beneficial Owner, doth hereby charge by way of legal mortgage :— Legal charge.

ALL, &c. (*parcels*) with the payment to the Mortgagees of the principal money, interest and other money hereby covenanted to be paid by the said A. B.

(2) For the purposes of this Charge the legal right of redemption shall cease on the said —— next (*six months from date*).

3. PROVIDED ALWAYS (*continue as in Form No.* 34, *p.* 95, *saying*, " the said A. B." *instead of* " the Borrower "). Liability as between Borrower and mortgaged property.

4. (*Add Form No.* 18, *p.* 81, *and any other provisions required.*)

IN WITNESS, &c.

No. III.

MORTGAGE *by* HUSBAND *of his* WIFE'S LEASEHOLDS *for years, she having* MARRIED *and* ACQUIRED *the Leaseholds* BEFORE 1883. (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part : WHEREAS :— Parties.

(1) (*Recite Lease to E. F., afterwards the wife of the Borrower, as in Form No.* 28, *Conveyances on Sale, Vol. I*) : Lease.

(2) The Borrower married the said E. F. on the —— day of ——, 1881, and no settlement or agreement for a settlement was made on their marriage or has been since made affecting the said leasehold property : Marriage.

(3) (*Form No.* 2A, *p.* 71) : Agreement for loan.

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72). THIS DEED WITNESSETH as follows :—

1. (*Covenant by Borrower to pay principal money and interest, as in Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

2. (*Form No.* 10, *p.* 74, *Charge by way of legal Mortgage.* [*If only part of the property comprised in the Lease is mortgaged and the rent has not been apportioned, add Form No.* 11, *p.* 75.])

3. THE Borrower, &c. (*Form No.* 18, *p.* 81, *Covenant to insure*). [*Add special clauses, if required.*]

IN WITNESS, &c.(*h*)

(*h*) As to covenants by a husband to settle the property of his wife, see M. W. P. Act, 1907, s. 2. In the case of registered land the husband should be the proprietor.

No. IV.

MORTGAGE *by* MARRIED WOMAN *of* FREEHOLDS *or* ENFRANCHISED LAND *or* LEASEHOLDS, *being her* SEPARATE PROPERTY *under the* MARRIED WOMEN'S PROPERTY ACT, 1882.(*i*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made the —— day of ——, BETWEEN A. B. (hereinafter called the Borrower), the wife of E. B., of, &c., to whom she was married after the 31st day of December, 1882,(*j*) of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—(*The rest of the deed will be in the same form as Prec. I, III or V of Group A, pp.* 105, 108, 110, *or any other Precedent applicable to the case with the necessary change of gender. If manorial incidents are subsisting, Form No.* 11A *should be used, and the deed must be produced to the Steward of the Manor.*)

IN WITNESS, &c.

GROUP C.—MORTGAGES UNDER THE SETTLED LAND ACT, 1925, AND FOR GIVING LEGAL EFFECT TO EQUITABLE INTERESTS UNDER SETTLEMENTS.

No. I.

MORTGAGE *of* FREEHOLDS *by a* TENANT *for* LIFE *under* SECTION 71 *of the* S. L. ACT, 1925, *to raise money required for* IMPROVEMENTS, EQUALITY *of* EXCHANGE, EXTINGUISHING MANORIAL INCIDENTS *or* COMMUTING ADDITIONAL RENT.(*k*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (*tenant for life, estate owner*) (hereinafter called the Borrower),

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(*i*) See Chapter on Husband and Wife in Vol. III. In the case of registered land the wife will be the proprietor.

Where property acquired after 1882.

(*j*) If the marriage was before 1883, and the property was acquired after 1882, so as to come within the M. W. P. Act, 1882, the date of the marriage will be omitted in the description of the mortgagor, and recitals will be introduced showing the acquisition of the property after 1882, and that no settlement has been made.

Mortgage under S. L. Act, 1925. s. 71.

(*k*) The sum advanced is capital money, and must be paid to the trustees or into Court: S. L. Act, 1925, s. 75; the mortgagee is not concerned to inquire whether the money is required for the purposes of the Act or not: s. 95; see also s. 110; T. Act, 1925, s. 17. No question any longer arises as to costs: S. L. Act, 1925, s. 71 (1) (ix).

Purchase of reversion on a lease.

Re Bruce [1905], 2 Ch. 372; 74 L. J. Ch. 578, no longer applies; there is no reference in the Act to the enfranchisement of land.

For registered land, see next Precedent.

of the 1st part, M., of, &c., and N., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS :—

Vesting Deed made shortly after 1st January, 1926.

(1) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Borrower of the other part, pursuant to the Settled Land Act, 1925, the Trustees declared that the freehold property hereinafter charged (with other property) was vested in the Borrower in fee simple Upon the trusts and subject to the powers and provisions upon and subject to which under a Settlement therein mentioned or otherwise the same ought to be held from time to time ; Also that the Trustees were the trustees (*l*) of the Settlement for the purposes of the said Act ; Also that the additional powers therein mentioned were conferred by the said Settlement ; And that the power to appoint new trustees of the Settlement was vested in the Borrower during his life :

Counsel's certificate.

(2) By Counsel's Certificate dated, &c., it was (save as respects the identity of the land) certified in effect that the statements made in the recited Vesting Deed were correct :

Variation where land is vested in personal representatives.

[(1) By a Vesting Assent dated, &c., made in writing by the Trustees pursuant to the Settled Land Act, 1925, they, as the personal representatives of X. deceased, declared that (*continue as above referring to the Will of* X.) :

(2) By Counsel's Certificate (*as above, referring to the Vesting Assent*).]

Variation where settlement is made by deed after 1925.

[(1) By a Vesting Deed, dated, &c., and made between the Borrower of the first part, F. G., spinster (afterwards and hereinafter called F. B.) of the second part, and the Trustees of the third part, in consideration of the marriage shortly afterwards solemnised between the Borrower and F. B., he, the Borrower (being then seised in fee simple free from incumbrances) declared that the freehold property hereinafter charged (with other property) was vested in him in fee simple Upon the trusts declared concerning the same by a Trust Instrument of even date therewith ; Also that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925 ; Also that the Settlement contained the additional powers therein set forth ; And that the power to appoint new trustees of the Settlement was vested in him during his life.]

(*l*) The S. L. Act trustees must join to receive the money.

Agreement for advance.

(3) [*or* (2)] The Borrower, as such trustee and estate owner under the recited Vesting Instrument, requires to raise the sum of £—— for one or more of the purposes mentioned in section seventy-one of the Settled Land Act, 1925 (as the Trustees hereby admit), and the Mortgagees have agreed to advance that sum upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing : NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees at the request of the Borrower to the Trustees as such trustees as aforesaid (the receipt of which sum the Trustees hereby acknowledge), THIS DEED WITNESSETH as follows :—

Legal charge.

1. (1) THE Borrower, in exercise of the powers for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers, and As Trustee, hereby charges by way of legal mortgage :

Parcels.

ALL THOSE, &c. (*see Forms in Sec. II, Conveyances on Sale, Vol. I*) (discharged as provided by section seventy-two of the said Act),

WITH the payment to the Mortgagees on the —— day of —— next of the principal sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum : AND ALSO so long as any principal money remains due under this deed after the said —— day of —— next, with the payment to the Mortgagees of interest on the said sum (as well before as after any judgment may be recovered hereunder) at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

(2) FOR the purposes of this Charge the legal right of redemption shall cease on the said —— next (*six months from date*).

Covenant by tenant for life to pay interest during his life.(*m*)

2. THE Borrower hereby covenants with the Mortgagees that the Borrower will (*n*) pay to the Mortgagees interest accruing during his life at the rate of £— per cent. per annum on the said sum of £——, or on so much thereof as shall for the time being remain unpaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such

(*m*) If a covenant by the tenant for life for payment of principal as well as interest is required, this clause will be omitted ; the first clause will consist of the usual covenant to pay (Forms Nos. 4 and 6) and will be followed by a Legal Charge (see Form No. 10) referring to the covenant to pay ; Form No. 34, freeing his estate from primary liability, will then be required, see next Precedent.

(*n*) If the mortgagor is required to enter into a full covenant for payment of principal and interest, this clause will be omitted.

half-yearly payments to be made on the —— day of —— if the Borrower shall be then living:

PROVIDED that nothing herein contained shall render the Borrower personally liable for the payment of the principal money hereby secured or any interest accruing after his death.(*o*)

3. THE Borrower hereby further covenants with the Mortgagees that the Borrower will during his life (*continue as in Form No.* 18, *p.* 81). Covenant to insure against fire.

[4. *Add special clauses as to reduction of interest, Forms Nos.* 29 *or* 30, *pp.* 90, 91, *if required.*]

[5. *Forms Nos.* 40 *and* 41, *or No.* 42, *pp.* 100, 101, *as to leasing powers, if required.*]

6. (*Form No.* 17, *p.* 80, *covenant against registration.*)

7. THE Borrower hereby acknowledges the right of the Mortgagees to production of the documents (*p*) mentioned in the —— Schedule hereto and to delivery of copies thereof. Acknowledgment.

IN WITNESS, &c.

(*Add schedules of documents, or otherwise, as required.*)

No. Ia.

MORTGAGE *by* TENANT *for* LIFE *of registered land.*(*q*)

This will be the same as Prec. No. VII, Group A, without recitals, but altering "As Beneficial Owner" *to* "As Trustee" *and adding at the head of the special provisions,* "No covenant is hereby implied to pay the principal or interest secured by this Charge" [*and if leaseholds are included* (*r*) "or as to payment of rent or

(*o*) This provision is necessary as, apart from a covenant to pay, the mortgagee becomes a simple contract creditor: Fisher, 6th ed., 7; *Ancaster* v. *Mayer* (1784), 1 Br. C. C. 454, 464; *Quarrell* v. *Beckford* (1816), 1 Madd. 269, 278; *Yates* v. *Aston* (1843), 4 Q. B. 182; 12 L. J. Q. B. 160.

(*p*) As the tenant for life can only hand over documents not relating to other settled land, the mortgagees should register a land charge unless a memorial can be registered in respect of all the land in a local deeds register. The mortgagees are not concerned with the trust instrument or with the stamp duty thereon: S. L. Act, 1925, s. 110 (2); and, save so far as documents relating to equitable interests form an essential part of the root of title, the mortgagees are not concerned with them. The General Conditions of 1925, with or without any necessary additions, will no doubt be used, on a subsequent sale, to make Counsel's certificate sufficient to cover the cases mentioned in the proviso to s. 110 (2). Documents.

(*q*) See L. R. Act, 1925, s. 90; L. R. R. 1925, r. 144.

(*r*) In the case of freeholds subject to rents, no covenant is implied by the L. R. Act, 1925, so this clause is not needed. See generally, as to implied covenants in charges, L. R. Act, 1925, s. 28, and L. R. R., 1925, r. 140; L. P. Act, 1925, ss. 76 and 77.

performance or observance of the covenants or conditions of the registered lease or as to indemnity in respect thereof "] *or*, "the liability of the Borrower under the covenants implied in this Charge is limited to the payment of interest [and rent and observance of the covenants under the lease] during his life and nothing herein contained or implied shall render him personally liable for the principal money or for any interest [or rent] accruing after his death."

[*The special provisions (if any—e.g., to insure) may be so expressed as to limit the personal liability of the Borrower to his lifetime and (unless in the case of a possessary title the title deeds can be handed over) the following acknowledgment:* "The Borrower hereby acknowledges the right of the Mortgagees to production of the documents mentioned in the Schedule hereto and to delivery of copies thereof" [*and add Schedule; accordingly; the land certificate will be retained at the Land Registry: L. R. Act*, 1925, *s.* 65].

The restrictions on the Register must be complied with and it will usually be advisable to obtain beforehand a certificate under L. R. Act, 1925, *s.* 89, *or an order under the restrictions: L. R. R.*, 1925, *r.* 237, *that the proposed charge is authorised, before actually making the loan, otherwise r.* 144 (2) *may cause trouble.*

The S. L. Act trustees must join to acknowledge receipt of the money: S. L. Act, s. 75.]

No. II.

MORTGAGE *of* FREEHOLDS *and* ENFRANCHISED LAND *by a* TENANT *for* LIFE *under* SECTION 71 *of the* S. L. ACT, 1925, *to raise money required to pay* COMPENSATION MONEY *and* INCUMBRANCES *on other parts of the* SETTLED LAND.(*s*)

Parties. Vesting Deed made shortly after 1926.

THIS LEGAL CHARGE is, &c. (*Parties and definitions as in Prec. No. I, p.* 138): WHEREAS:—

(1) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Borrower of the other part,

Mortgage to discharge incumbrances.

Variation if the land originally mortgaged is to be part of the security.

(*s*) This s. 71 authorises the tenant for life to raise money for discharging incumbrances. This power is not confined to the case where an existing mortgagee gives notice requiring to be paid off: *Re Clifford* [1902], 1 Ch. 87; 71 L. J. Ch. 10; and see *Re Pizzi* [1907], 1 Ch. 67; 76 L. J. Ch. 87.

If the same land is made subject to the new security, then the incumbrances paid off should be scheduled with any transfers of even date taken by the mortgagee. As to registered land, see last Precedent.

pursuant to the Settled Land Act, 1925, the Trustees declared that the freehold property first hereinafter described and the enfranchised land (formerly copyhold of the Manor of ——) secondly hereinafter described, with other property, was vested in the Borrower in fee simple subject as to the said enfranchised land to the manorial incidents and rights of the lord of the said manor saved by the Law of Property Act, 1922, and as to certain other property (not including the property hereinafter charged) subject to the incumbrances therein mentioned and so subject Upon the trusts, &c. (*continue as in first recital to Prec. No. I, p.* 139).

(2) (*Recite counsel's certificate as in Prec. No. I, supra.*)

(3) (*Recite compensation agreement of even date.*)

(4) (*Recite endorsed receipt by the lord for fines paid by the Borrower and receipt given to the Trustees for compensation money paid in a lump sum.*)

Advance of compensation money.

(5) The said sum so paid by the Trustees for compensation money as aforesaid was in fact advanced by the Mortgagees at the request of the Borrower to the Trustees on the terms that the repayment thereof with interest should be secured in manner hereinafter appearing:

Advance for discharging incumbrances.

(6) The Borrower as such trustee and estate owner under the recited Vesting Deed requires to raise the further sum of £—— for the purpose of discharging incumbrances affecting property comprised in the said Deed and the Mortgagees have agreed to advance that sum (making with the said compensation money the aggregate sum of £——) upon having the repayment thereof with interest secured in manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the aggregate sum of £—— on or before the execution of this deed paid by the Mortgagees at the request of the Borrower to the Trustees as such trustees as aforesaid (the receipt of which aggregate sum the Trustees hereby acknowledge), THIS DEED WITNESSETH as follows:—

Covenant to pay.(*t*)

1. THE Borrower hereby covenants (*Covenant to pay principal and interest, Forms Nos.* 4 *and* 6, *pp.* 72, 73).

Legal charge.

2. (1) THE Borrower in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other

(*t*) It is assumed here that the tenant for life has agreed to give the covenant to pay principal as well as interest, *cf.* Prec. No. I of this Group; in some cases he may have been originally liable for the debts.

powers, and As Trustee, hereby charges by way of legal mortgage :

FIRST, ALL, &c. (*parcels of freeholds*) :

AND SECONDLY, ALL, &c. (*parcels of the enfranchised land excepting any mineral and sporting rights of the lord which may not have been acquired under the Compensation Agreement*) :

WITH the payment to the Mortgagees of the principal money, interest and other money hereby covenanted to be paid by the Borrower : And discharged as provided by section seventy-two of the said Act :

(2) FOR the purposes of this Charge the legal right of redemption shall cease on the said —— next (*six months from date*).

Covenant to insure.

3. (*Form No.* 18, *p.* 81.)

4. (*Form No.* 34, *p.* 95, *as to liability of Borrower.*)

5. (*Form No.* 17, *p.* 80, *Covenant against registration.*)

6. (*Forms Nos.* 40 *and* 41, *p.* 100, *as to leasing powers.*)

7. (*As in Clause* 7, *Prec. No. I*, *p.* 141, *acknowledgment.*)

IN WITNESS, &c. (*Add schedules, as required.*)

No. III.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *by* STATUTORY OWNERS *under* SECTION 71 *of the* S. L. ACT, 1925, *the* FINANCE ACT, 1894, *and* SECTION 16 (3) *of the* LAW OF PROPERTY ACT, 1925, *for raising Money to pay* DEATH DUTY.(*u*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. T., of, &c., and C. T., of, &c. (hereinafter called the Borrowers), of the one part, and R. M., of, &c., and T. M., of, &c. (hereinafter called the Mortgagees), of the other part : WHEREAS :—

(1) (*Recite Lease to testator.*)

Raising of duty.

(*u*) The estate duty charge is automatic : *Lord Advocate* v. *Moray* [1905], A. C. 531 ; 74 L. J. P. C. 122. A tenant for life is liable for the interest on the duty and cannot raise it by mortgage : *Re Howe's S. E.* [1903], 2 Ch. 69 ; 72 L. J. Ch. 461. It is assumed in this Precedent that there is no tenant for life (or limited owner) of full age and that the statutory powers have either been given expressly to the trustees or that they have those powers under

Statutory owners.

S. L. Act, 1925, ss. 23 or 26. There is no objection to personal representatives assenting to the land passing to a tenant for life of full age, though the duties may not have been discharged, provided that they are satisfied that reasonable arrangements have been made for discharging them : Ad. of E. Act, 1925, s. 36 (10), see also S. L. Act, 1925, s. 8 (3) (6). Pending an assent the person entitled can be let into possession : Ad. of E. Act, 1925, s. 43.

Registered land.

For the purposes of registered land, Prec. No. IA can be adapted ; reference must be made to the further advances intended to be made.

(2) (*Recite seisin of testator at his death in regard to the freeholds; his death and probate of the Will by the Borrowers. The Will itself should not be recited, the Assent infra takes its place.*)

(3) (*Recite Vesting Assent by the Borrowers in regard to the freeholds and leaseholds in favour of themselves and nominating themselves S. L. Act trustees.*)

(4) (*Recite Counsel's Certificate as to the correctness of the Vesting Assent.*)

Agreement for advance.

(5) The Borrowers, as statutory owners, under the recited Vesting Assent require to raise the sum of £—— forthwith for discharging duties which became payable on the death of the said testator and the costs of and incidental to discharging the said duties and of and incidental to this deed and also further sums from time to time to discharge subsequent instalments of duty as and when those instalments become payable and the costs of paying the same; and the Mortgagees have at the request of the Borrowers agreed to advance the said sum of £——, together with the said further instalments, upon having the payment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

Of payment of interest on duty.

(6) The Borrowers have out of income paid all interest (if any) which has accrued in respect of the said duty:

Payment of first instalment.

(7) On or before the execution hereof the first instalment of the said duty has been paid and directions have been given for the receipt therefor to be sent to the Mortgagees:(*v*) NOW, in pursuance of the said agreement and in consideration of the sum of £—— paid on or before the execution of this deed by the Mortgagees to or by the direction of the Borrowers (the receipt and payment of which sum the Borrowers hereby acknowledge) and of the covenant by the Mortgagees to make further advances hereinafter contained, THIS DEED WITNESSETH as follows:—

Legal charge.

1. (1) THE Borrowers in exercise of the powers for this purpose conferred on them by the Settled Land Act, 1925, the Finance Act, 1894, and the Law of Property Act, 1925, and of all other powers, As Trustees, hereby charge by way of legal mortgage:

(*v*) A banker's cheque can, if desired, be made payable direct to the Commissioners of Inland Revenue. As to the position of a mortgagee who is under an obligation to make further advances: L. P. Act, 1925, s. 94. A land charge or a memorial should be registered, as the deeds cannot be handed over.

FIRST, ALL AND SINGULAR the freehold properties mentioned in the First Schedule hereto,

AND SECONDLY, ALL the property comprised in and demised by the recited Lease,

WITH the payment to the Mortgagees on the —— day of —— next of the said sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum :

AND ALSO on whichever of the half-yearly days hereby fixed for payment of interest shall happen next after any further money shall be advanced or become due (other than for interest) to the Mortgagees under this Charge with the payment to them of the amount thereof, with interest thereon (as well after as before any judgment may be obtained hereunder) at the rate aforesaid from the day on which the same was advanced or became due :

AND ALSO so long as any principal money remains due hereunder after the said —— next or after the first half-yearly day which happens after the date of the advance with the payment to the Mortgagees of interest thereon (as well after as before as aforesaid) at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year ; And as regards this Charge discharged as provided by section seventy-two of the Settled Land Act, 1925.

(2) FOR the purposes of this Charge the legal right of redemption shall cease on the said —— day of —— next.

Assignment of Inland Revenue charge.

2. THE Borrowers, As Trustees, hereby assign unto the Mortgagees :

ALL THAT the benefit of the Charge created by section nine of the Finance Act, 1894, by reason of the payment of the said duty, but so far only as such Charge affects the property first hereinbefore described, TOGETHER with the benefit of all further charges which may arise by reason of the payment of further instalments of duty, but so far only as such charges may affect the property first hereinbefore described :

TO HOLD unto the Mortgagees absolutely (in aid of the foregoing Charge), but subject to redemption on payment of the principal money and interest hereby secured.

Covenant to make further advances.

3. (1) THE Mortgagees hereby covenant with the Borrowers that as and when any further instalments of duty become payable by reason of the death of the said testator in respect of the property hereby charged and any other property subject to the trusts of the Will referred to in the recited Vesting Assent

and settled to devolve with the property hereby charged, the Mortgagees shall forthwith pay the said instalments, together with the costs incidental to the discharge thereof:

(2) PROVIDED that as and when each instalment is paid the receipt for the duty shall be delivered to the Mortgagees.

4. (*Covenant to insure, Form No.* 18, *p.* 81. *Add any further special clauses which may be required.*)

5. (*Add acknowledgment for production of documents.*)

IN WITNESS, &c. (*Add schedules as required.*)

No. IV.

MORTGAGE *of* FREEHOLDS *by* TENANT *for* LIFE *under* S. 69 *of* S. L. ACT, 1925, *by way of* SUBSTITUTED SECURITY *for* OTHER PROPERTY *released by the* MORTGAGEES.(*w*) (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN T. L., of, &c. (hereinafter called the Borrower), of the 1st part, A. T., of, &c., and B. T., of, &c. (hereinafter called the Trustees), (*x*) of the 2nd part, and R. M., of, &c., and S. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:— Parties.

(1) By a Mortgage dated, &c., and made, &c., the lands therein mentioned were conveyed to the Mortgagees in fee simple by way of mortgage for securing payment to them on the day therein mentioned and since passed of the principal sum of £——, with interest thereon at the rate of £4 per cent. per annum: Mortgage made before 1926.

(2) By virtue of the Law of Property Act, 1925, the lands Conversion into term mortgage.

(*w*) This section enables the tenant for life to transfer a charge to another part of the settled land or capital money with the consent of the incumbrancer. in exoneration of the original security. Substituted security under S. L. Act, 1925.

Another mode is to include the whole transaction in one deed—the mortgagee joining to release his original security, and the land newly acquired being, by the direction of the tenant for life, made subject to a legal charge in favour of the mortgagees: *ib.*, s. 82.

Precedent No. Ia can be adapted; the consideration will be referred to as: "originally advanced on the security of Charge No. ——, registered (*date*), under Title No. —— (since released), the present charge being accepted as a substituted security for the principal sum of £—— and interest thereon at £—— p. c. p. a. from the —— day of —— last owing on the said charge." Registered land.

(*x*) The trustees are merely formal parties, and as no money is passing need not execute, *cf. Re Norton* [1909], 2 Ch. 59; 78 L. J. Ch. 489; transactions, not involving the payment of capital to the trustees can be carried out though there may be no trustees: *ib.*, s. 110 (4). Transactions where no capital arises.

comprised in the recited Mortgage became vested in the Mortgagees for a term of 3,000 years, without impeachment of waste, subject to cesser on redemption, and subject to that term, the fee simple in those lands became vested in the Borrower :

Vesting Deed.

(3) By a Vesting Deed dated, &c., and made, &c., the lands comprised in the recited Mortgage (with other property, including the property hereinafter charged) were [conveyed to or] stated to be vested in the Borrower in fee simple (subject so far as affected thereby to the recited Mortgage) Upon the trusts of a Trust Instrument of even date therein mentioned : And the Trustees were thereby declared to be the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Conveyance releasing part of the security.

(4) By a Conveyance bearing even date with but executed before this deed and made between the Borrower of the first part, the Trustees of the second part, the Mortgagees of the third part, and X. of the fourth part, in consideration of the sum of £—— paid to the Trustees, certain property at ——, in the County of ——, being part of the lands comprised in the recited Mortgage were conveyed and surrendered unto the said X. (*Purchaser*) in fee simple discharged from the recited Mortgage and all principal money and interest thereby secured :

State of mortgage debt.

(5) The said principal sum of £——, with interest thereon from the —— day of ——, is still owing to the Mortgagees upon the security of the recited Mortgage :

Agreement for substituted security.

(6) The Mortgagees concurred in the said Conveyance in consideration of having a substituted security made to them in manner hereinafter appearing for payment of the said sum of £—— and the interest due and to become due thereon :

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows :—

Legal charge of principal and interest.

1. (1) THE Borrower, in exercise of the power for this purpose conferred on him by the Settled Land Act, 1925, and of all other powers, hereby, As Trustee, charges by way of legal mortgage :

ALL THOSE, &c. (*Parcels*) : (discharged as provided by section seventy-two of the said Act),

WITH the payment to the Mortgagees of the said sum of £—— and all interest due and to become due thereon at the rate of £— per cent. per annum on the —— day of —— next (*the first day for payment of interest*) in substitution for and in exoneration of the lands so sold and surrendered as aforesaid ;

AND ALSO, so long as any principal money remains due hereunder after the —— day of —— next, with the payment to the

Mortgagees of interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year:

(2) FOR the purposes of this Charge the legal right of redemption ceases on the said —— next.

2. (*Add covenant by the Borrower to pay interest during his life, see Prec. No. I of this Group, supra.*)

3. (*Add acknowledgment of right to production of documents and see that a land charge is registered. It may be expedient also to vary the provisions of the recited Mortgage by a separate deed.*)

IN WITNESS, &c.(*y*)

No. V.

APPOINTMENT *under a Joint* OVER-RIDING POWER *directing a* LEGAL MORTGAGE *to be made by a* TENANT FOR LIFE *under S. L. Act*, 1925, *ss.* 16 *and* 71. (*Equitable Interest or Power.*) (*z*)

THIS APPOINTMENT is made, &c., BETWEEN A. B., of, &c., and C. B., of, &c. (hereinafter called the Appointors), of the one part, and E. T., of, &c., and F. T., of, &c. (hereinafter called the Trustees), of the other part: WHEREAS:— Parties.

(1) (*Recite the Settlement, Will or Disentailing Assurance,* Instrument creating joint power.

(*y*) In former editions a Precedent was given of a mortgage by a tenant for life of the proceeds of sale under an order made under S. L. Act, 1884, s. 7. This procedure is no longer available. In place thereof an order must be obtained under L. P. Act, 1925, s. 30, directing the trustees for sale to carry out the transaction, or for a vesting order by way of mortgage. If an order is in force under S. L. Act, 1884, s. 7, this only operates as a delegation of the leasing powers and powers to accept surrenders, &c., under L. P. Act, 1925, s. 29, see *ib.*, sub-s. 4. Mortgages where land is held on trust for sale and the trustees refuse to act.

(*z*) If the power does not have priority to all the limitations and powers, then the persons having prior equitable interests must join in the appointment to consent to the money being raised in priority to their rights pursuant to S. L. Act, 1925, s. 16. No mortgagee would be advised to lend on a legal mortgage, subject to an equitable interest, unless that interest was one which would in the ordinary course cease before the time came for realising the security. If the requisite consents cannot be obtained, the execution of the mortgage should be postponed till the money can be properly raised under S. L. Act, 1925, s. 71. The appointment will not come on the title, the equitable interests are kept off the title by virtue of s. 16. Consents by persons having prior rights.

This Precedent is applicable to registered land; when produced to the Registrar it will enable him to give a certificate that the proposed registered charge for giving effect to the transaction will be registered. The existing restrictions on the register applicable to registered land will generally be sufficient without any further entry being made till the charge is registered. Registered land.

showing that the land in the Schedule is held upon such trusts generally as the Appointors may by Deed appoint, that the power has priority over all the limitations and powers of the settlement, that A. B. is (subject to the power) tenant for life in possession and that the Trustees are the S. L. Act trustees) :

Desire of Appointors to raise money.

(2) The Appointors are desirous of raising the net sum of £—— on the security of the property mentioned in the Schedule hereto with the costs of raising the same, and have accordingly agreed to make such appointment as is hereinafter contained :

NOW, in consideration of the premises and in exercise of the recited power of appointment and of all other powers, THIS DEED WITNESSETH and the Appointors hereby appoint as follows :—

Direction to raise net sum.

1. THE said A. B. as such tenant for life as aforesaid, or his successors in title, shall by means of a Charge by way of Legal Mortgage on the security of the property mentioned in the Schedule hereto forthwith raise the said net sum of £—— and the costs of raising the same (including the costs of and incidental to this appointment) with interest thereon at a rate not exceeding £— per cent. per annum.

Mode of raising.

2. (1) THE said Settlement [Will *or* Disentailing Assurance] with the Vesting Instrument made for giving effect thereto, shall be read and have effect as if the same contained a power in extension of section seventy-one of the Settled Land Act, 1925, to raise a net sum not exceeding the said principal sum of £—— for general purposes.

(2) THE said Mortgage shall be made under the powers conferred by that section (as so extended) and in accordance with section sixteen of the said Act :

(3) THE property mentioned in the Schedule hereto shall be primarily liable for the mortgage money and interest in exoneration of the estate and effects of the said A. B :

(4) THE capital money arising under the said Mortgage shall in the first instance be paid to the Trustees or other the Trustees for the time being of the said Settlement for the purposes of the said Act.

Appointment of the capital money.

3. THE Trustees or other Trustees to whom the same may be paid as aforesaid shall stand possessed of the money so paid to them In trust (subject to discharging thereout the costs aforesaid) to pay the net balance to the Appointors or to the survivor of them discharged from all the trusts of the said

Settlement [Will], and the receipt of the Appointors or the survivor of them shall be a complete discharge.

IN WITNESS, &c. (*Add Schedule. In some cases it may be necessary to commute duty before all the money can be paid.*)

No. VI.

MORTGAGE *by a tenant for life under S. L. Act*, 1925, *ss.* 16 *and* 71, *for giving effect to an* APPOINTMENT (*see last Precedent*) *under an* OVER-RIDING POWER. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, E. T., of, &c., and F. T., of, &c. (hereinafter called the Trustees), of the 2nd part, and R. M., of, &c., and S. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

(1) and (2) (*Recite the Vesting Instrument showing that the Scheduled property is vested in the Borrower in fee simple on the trusts of a Settlement therein referred to, that the Trustees are the S. L. Act trustees of the Settlement, and that the additional powers included a power for the Borrower and C. B., by Deed, to extend the statutory powers; Also Counsel's Certificate certifying the correctness of the Vesting Instrument*):

Agreement for advance.

(3) The Borrower as such trustee and estate owner under the recited Vesting Instrument requires to raise the sum of £—— for the purposes of section seventy-one of the Settled Land Act, 1925, as extended under the additional powers aforesaid (as the Trustees hereby admit), and the Mortgagees have agreed to advance that sum upon having the payment thereof with interest secured in manner hereinafter appearing:

Operative parts.

NOW, &c. (*continue as in Prec. No. II of this Group, supra, omitting the references to enfranchised land, but adding at the end of the Legal Charge* (*Clause* 2) *the following sub-clause:—*

(3) THIS Charge is made pursuant to section sixteen of the Settled Land Act, 1925, in priority to all the trusts of the Settlement mentioned in the said Vesting Instrument and all equitable interests and powers subsisting or to arise thereunder.)

(*Continue as in Prec. No. II of this Group.*)

IN WITNESS, &c. (*Add Schedules and see that a land charge is registered, as all the deeds will not be handed over. In the case of registered land Prec. No.* IA *will be used. It should be stated in the Charge*—"This Charge is made pursuant to s. 16 of the S. L. Act, 1925.")

No. VII.

MORTGAGE *for raising the arrears of a* JOINTURE RENTCHARGE *and for further advances.* (*Equitable Interest.*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN F. J., of, &c. (hereinafter called the Jointress), of the 1st part, A. T., of, &c., and B. T., of, &c. (hereinafter called the Trustees), of the 2nd part, and C. M., of, &c., and D. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

Settlement creating the jointure.

(1) (*Recite the Settlement* (*or Will*) *under which the Jointress has a rentcharge in priority to the other limitations showing that T. L. is tenant for life in possession subject to the jointure and F. T. and G. T. are the S. L. Act trustees*):

Arrears of jointure.

(2) The sum of £—— with the amount accruing since the date of the last half-yearly day on which the said rentcharge ought to have been paid remains owing in respect of that rentcharge:

Appointment of equitable term (*a*) to raise a jointure.

(3) By an Appointment bearing even date with but executed before this deed and made between the Jointress of the one part and the Trustees of the other part in exercise of the powers for this purpose conferred by sub-section (4) of section one hundred and twenty-one of the Law of Property Act, 1925, the Jointress appointed the freehold property mentioned in the Schedule hereto to the Trustees for a term of 700 years from the date thereof without impeachment of waste Upon trust by all or any of the means mentioned in that section or by any other reasonable means from time to time to raise the said jointure and all arrears thereof due (as aforesaid) or to become due and all costs and expenses occasioned by the non-payment of the said jointure or incurred in compelling or obtaining payment thereof or otherwise relating thereto, including the costs of the preparation and execution of this appointment and the costs of the execution of the trusts thereof:

Agreement for advance.

(4) The Mortgagees have at the request of the Jointress and of the Trustees agreed to advance to the Trustees the said sum of £—— with the further sum of £—— for costs (making the aggregate sum of £——) and such further advances as may from

Equitable term.

(*a*) Under L. P. Act, 1925, s. 8 (2), only an equitable term can be appointed, as the jointress only has an equitable interest. No further advance must be made until the arrears have accrued. The money could be raised by the tenant for life (next Precedent) at the request in writing of the Jointress without an equitable mortgage. The latter does not come on the title to the land.

time to time be required for keeping down the said jointure upon the payment thereof with interest at the rate hereinafter mentioned being secured to them in manner hereinafter appearing :

Arrangement for legal mortgage.

(5) As part of the terms of the present advance and of making such further advances as aforesaid arrangements have been made with the said T. L. as such tenant for life as aforesaid for the grant under section sixteen of the Settled Land Act, 1925, of a Charge by way of Legal Mortgage for securing payment of the said principal sum, further advances and interest.(*b*)

Preliminary clause.

NOW, &c. (*preliminary clause, Form No.* 3, *p.* 72, *supra, substituting the* "Trustees" *for the* "Borrower" *throughout the Precedent.*)

Charge for securing principal money, further advances and interest.

1. (1) THE Trustees, As Trustees, hereby charge—

ALL the premises described in the Schedule hereto with the payment to the Mortgagees on the —— next (*six months from date*) of the sum of £—— with interest thereon from the date hereof at the rate of £—— per cent. per annum : AND ALSO on whichever of the half-yearly days hereby fixed for payment of interest which shall happen after any further money shall be advanced by or become due (other than for interest) to the Mortgagees under this deed with the payment to them of the amount thereof with interest thereon at the rate aforesaid from the same being advanced or becoming due : AND ALSO so long as any principal money remains due under this deed after the said —— next or after the half-yearly day which happens after the advance with the payment to the Mortgagees of interest thereon at the rate aforesaid on the —— day of —— and the —— day of —— in every year :

(2) PROVIDED that nothing herein contained shall operate to impose any personal liability on the Trustees or on their respective estates and effects.

Sub-demise of the jointure term.

2. THE Trustees, As Trustees, hereby demise unto the Mortgagees :

ALL the premises hereinbefore charged :

TO HOLD (*continue as in Form No.* 12, *p.* 77, *supra, substituting* "recited Appointment" *for* "the said Lease").

Proviso for cesser.

3. (*Forms Nos.* 9, 9A *and* 9B, *supra, p.* 74, *substituting* "Trustees" *for* "Borrower" *and leaving out the words in brackets referring to property assigned.*)

Stamp.

(*b*) The *ad valorem* stamp will be placed on this security ; the legal mortgage will carry a 10*s.* stamp, which must be adjudicated, see next Precedent.

4. (*Add agreement by the Mortgagees to make such further advances as may be requisite from time to time to discharge instalments of the rentcharge in arrear for* 40 *days or upwards.*)

Direction for enforcement of equitable interest.

5. THE Jointress hereby directs that the said T. L. as such tenant for life as aforesaid or his successors in title shall forthwith pursuant to section sixteen of the Settled Land Act, 1925, execute a charge for giving legal effect to the equitable Mortgage hereby created.

Acknowledgment.

6. (*Add acknowledgment by the Trustees of the right to production of the recited Appointment.*)

IN WITNESS, &c. (*Add Schedule of the property charged and see that a Land Charge is registered in respect of the puisne mortgage created by the next Precedent or pending its execution of the general equitable charge created by the above security. As to registered land, see notes to Prec. No. V, supra; but in this case a caution should be lodged if the tenant for life does not agree to raise the money.*)

No. VIII.

LEGAL MORTGAGE *by a* TENANT *for* LIFE *for giving effect to an* EQUITABLE MORTGAGE *for raising the arrears of a* JOINTURE *and for securing* FURTHER ADVANCES *for meeting the rentcharge.* (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN E. (*tenant for life*), of, &c. (hereinafter called the Borrower), of the 1st part, F. T., of, &c., and G. T., of, &c. (*c*) (hereinafter called the Trustees), of the 2nd part and C. M., of, &c., and D. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

(1) and (2) (*Recite the Vesting Instrument showing that the scheduled property is vested in the Borrower in fee simple on the trusts of the Settlement referred to and that the Trustees are the S. L. Act trustees; also Counsel's Certificate as to the correctness of the Vesting Instrument.*)

Advance by Mortgagees to repay arrears of jointure and costs.

(3) The Mortgagees have advanced the sum of £—— to discharge the arrears of a jointure rentcharge having priority to the other limitations contained in the Settlement referred to in the said vesting instrument and the costs incidental thereto (including the costs of this deed) on the security of an equitable

(*c*) The S. L. Act trustees should direct the payment of the capital money to the Jointress: S. L. Act, 1925, s. 18 (2) (*c*). As to the stamp, see note to last Precedent.

mortgage of the property described in the Schedule hereto and have agreed to make such further advances (if any) as may be requisite from time to time to discharge instalments of the said jointure in arrear for forty days or upwards and accordingly the Mortgagees have (as the Borrower hereby admits) become entitled by virtue of section sixteen of the Settled Land Act, 1925, to require such Legal Charge to be made in their favour as hereinafter contained and they have requested the Borrower to execute this Charge for giving effect to the rights aforesaid :

NOW, for complying with the requirements of section sixteen of the Settled Land Act, 1925, and in exercise of the powers conferred by that Act, THIS DEED WITNESSETH as follows:—

Legal charge.

1. (1) (*Continue as in Clause I of Prec. No. I of this Group and referring to further advances as in last Precedent.*)

(2) FOR the purposes of this Charge the legal right of redemption shall cease on the —— next (*six months from date*).

(3) THIS charge is made pursuant to section sixteen of the Settled Land Act, 1925, in priority to all the trusts of the Settlement mentioned in the recited Vesting Instrument and to any equitable interest subsisting or to arise thereunder.

(4) NOTHING herein contained shall render the Borrower liable for the principal money or for any interest hereby secured in excess of the income accruing to the Borrower during his life in respect of the property comprised in the Settlement aforesaid.(*d*)

Interest in arrear to be accumulated.

2. (*Adapt Form No.* 32, *p.* 93, *supra.*)

Agreement to make further advances.

3. (*Add agreement by the Mortgagees with the Borrower to make such further advances from time to time as may be requisite for discharging the instalments of the jointure in arrear for forty days or upwards on demand by the Jointress. Adapt Clause* 4 *of Prec. No. XIII of Group A, supra, p.* 125, *and see L. P. Act*, 1925, *s.* 94, *for the rights arising where there is an obligation to make further advances.*)

Acknowledgment.

4. (*Add further special clauses as required and an acknowledgment of right to production of documents and see that a Land Charge is registered.*)

IN WITNESS, &c. (*Add Schedules of the property charged and of the documents acknowledged.*)

(*d*) It is assumed that the income of the settled property is insufficient to keep down the jointure.

No. VIIIA.

LEGAL MORTGAGE *by a* TENANT *for* LIFE *for giving effect to an* EQUITABLE MORTGAGE *for raising the arrears of a* JOINTURE *and for securing* FURTHER ADVANCES *for meeting the rentcharge where the land is* REGISTERED *under the* LAND REGISTRATION ACT, 1925.

(*Adapt Prec. No. IA, adding after* "the receipt of which is hereby acknowledged" *the words* "and of the covenant for further advances hereinafter contained," *and after* "in every year" *the words* "and also of all other principal money (if any) advanced or to become due under this Charge, and interest thereon at the rate aforesaid from the day of the same being advanced or becoming due," *and among the special provisions add*, "The Mortgagees hereby jointly and severally covenant with the Borrower that the Mortgagees will from time to time, on the security of this Charge, advance on demand made by F. J., of, &c. (*the Jointress*), such sums as may be due and in arrear for forty days and upwards on account of a certain jointure rentcharge of £—— per annum to which she is entitled, the said advances to carry interest at the rate aforesaid."

Add at the end "This Charge is made by the Borrower pursuant to section sixteen of the Settled Land Act, 1925."

The tenant for life, the trustees and the Mortgagees should execute.)

No. IX.

MORTGAGE *by* PORTION TRUSTEES *for raising portions or advancements.*(*e*) (*Equitable Interest.*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN P. T., of, &c., and R. T., of, &c. (hereinafter called the Borrowers), of the 1st part, K. L., of, &c. (hereinafter called the Jointress), of the 2nd part, and A. M., of, &c., and B. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

(1)—(6) (*Recite the Settlement giving power to appoint jointures*

How portions usually raised or paid.

(*e*) If there is not sufficient capital whereout the portions can be properly paid, they will usually be raised under S. L. Act, 1925, s. 71, without being preceded by an equitable mortgage. But if there is a paramount jointure, it may be convenient, in order to bring s. 16 into force, to have an equitable mortgage, in which the jointress will postpone her rights.

Registered land.

This Precedent applies to registered land; if necessary, a caution can be lodged till a registered charge is made by the tenant for life for giving effect to the transaction on the register.

and charge portions, followed by the Deed appointing a jointure to the Jointress and limiting a term of, say, 700 years to the Borrowers or their predecessors on usual trusts for raising portions [and, if necessary, advancements in respect of expectant portions]. Or, recite the Settlement charging the jointure and limiting a portions term to the Borrowers or their predecessors in office. Show the appointments (if any) of new trustees of the portions term. Show that the settled land belongs to T. L. (stating his birth) during his life, subject to the jointure and the portions term, and who are the S. L. Act trustees, designating them as "the Trustees" if they are not the Borrowers. In most cases, to save expense, they will be the same persons as the portion trustees. Refer to any Disentailing Assurances or Resettlements necessary for the above purposes. State the marriage and the births of the portionists to show that the portions or advancements are raisable) :

Desire to raise portions and agreement to make the advance.

(7) The Borrowers are desirous of raising the sum of £—— for discharging the said portions [money required for advancement] [and the costs of raising the same, including the costs of and incidental to this deed], and the Mortgagees have agreed to advance that sum [*if the S. L. Act trustees are not the same persons as the portion trustees, add*—to be paid in the first instance to the Trustees as such Settled Land Act trustees as aforesaid], on having the payment thereof with interest secured in manner hereinafter mentioned :

Jointress to concur.

(8) As part of the terms of the said advance it was agreed that the Jointress should join in this deed (*f*) for the purpose of postponing the said jointure rentcharge to the security intended to be made :

Arrangement for legal effect to be given to the mortgage.

(9) It has been arranged that the said T. L. shall, by a Legal Charge on the property mentioned in the Schedule hereto to bear even date herewith, give legal effect to the security hereby made :

NOW, in pursuance of the said agreement and in consideration of the sum of £—— paid by the Mortgagees to the Borrowers (the receipt, &c.) [*or*, to the Trustees by the direction of the Borrowers for the purposes aforesaid (the payment of which

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(*f*) Instead of having an equitable mortgage, it would be sufficient for the purposes of S. L. Act, 1925, s. 16, if the jointress gave a separate consent in writing to the tenant for life to raise the portions under s. 71. This will be the usual practice, but this Precedent is given to show how the transaction can be worked out in detail.

Separate consent to postpone equitable interest.

sum the Borrowers hereby acknowledge)], THIS DEED WITNESSETH as follows :—

Charge for securing principal and interest, Jointress postponing her charge.

1. (1) THE Borrowers, As Trustees, hereby charge :

ALL the premises described in the —— Schedule hereto :

WITH the payment (*continue as in Prec. No. VII, supra, leaving out the reference to further advances*).(*g*)

(2) THE Jointress, As Mortgagee, hereby declares that the Charge hereby made, as well as the Legal Charge to be made by the said T. L. as aforesaid, shall have priority over the jointure rentcharge limited to her as aforesaid.

(3) NOTHING herein contained shall operate to impose any personal liability on the Borrowers or their respective estates and effects.

Sub-demise of the portions term.

2. THE Mortgagees, As Trustees, hereby demise unto the Mortgagees : (*h*)

ALL the premises hereinbefore charged :

TO HOLD (*continue as in Form No.* 12, *p.* 77, *supra, substituting a reference to the instrument creating the portions term for* " the said Lease ").

Proviso for cesser.

3. (*Forms Nos.* 9 *and* 9B, *supra, p.* 74, *leaving out the words in brackets at the end referring to property assigned.*)

Direction for enforcement of equitable interests.

4. (1) THE Borrowers and the Jointress hereby direct that the said T. L. or his successors in title shall forthwith, pursuant to section sixteen of the Settled Land Act, 1925, and in exercise of the power to raise money to discharge incumbrances and the costs of raising the same conferred by section seventy-two of that Act, execute a charge on the property mentioned in the —— Schedule hereto for giving legal effect to the Equitable Mortgage hereby created in priority to the trusts and powers of the said Settlement :

(2) NOTWITHSTANDING that the principal money may, in the first instance, be paid to the Settled Land Act trustees aforesaid, the same shall, subject to discharging the costs of the Legal

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Stamp.

(*g*) The *ad valorem* stamp will be placed on the equitable mortgage ; a 10*s.* stamp will be placed on the legal charge and the stamp adjudicated.

Equitable term.

(*h*) *Semble*, a term, though equitable, cannot be assigned by way of mortgage, it must be sub-demised : L. P. Act, 1925, s. 86 (2), the Assignment of 1st October, 1928, in Specimen No. 3 of the 6th Sch. to that Act appears to take effect by sub-demise ; the interest being equitable the termors can only create an equitable sub-term or an equitable charge, the former is preferable. Though the portions term may originally have been a legal term, it will become equitable after the vesting instrument is made : S. L. Act, 1925, 2nd Sch., para. 1 (6).

Charge in accordance with section seventy-three of that Act, be paid to the Borrowers for the purpose of discharging the said portions.

5. (*Add acknowledgment of documents and any special provisions required.*) Acknowledgment of documents.

IN WITNESS, &c. (*Add Schedules.*)

No. X.

LEGAL MORTGAGE *by a* TENANT *for* LIFE *for raising money for discharging* PORTIONS.(*i*) (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN T. L., of, &c. (hereinafter called the Borrower), of the 1st part, P. T., of, &c., and R. T., of, &c. (hereinafter called the Trustees), of the 2nd part, and A. M., of, &c., and B. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:— Parties.

(1) and (2) (*Recite the Vesting Instrument showing that the scheduled property is vested in the Borrower in fee simple on the trusts of a Settlement referred to and that the Trustees are the S. L. Act trustees; also Counsel's Certificate as to the correctness of the Vesting Instrument*):

(3) The Borrower requires the sum of £—— for the purpose of enabling certain family charges arising under the Settlement hereinbefore mentioned to be discharged and for the payment of the costs incidental thereto (including the costs of these presents) and the Mortgagees have agreed to advance the said sum upon payment thereof with interest at the rate hereinafter mentioned being secured to them in manner hereinafter appearing: NOW, in consideration of the sum of £—— now paid by the direction of the Borrower by the Mortgagees to the Trustees (*the receipt, &c.*), and for complying with the requirements of section sixteen of the Settled Land Act, 1925, and in exercise of the powers conferred by that Act, THIS DEED WITNESSETH as follows:— Agreement to advance money to enable family charges to be discharged.

1. THE Borrower hereby (*Forms Nos.* 4 *and* 6, *pp.* 72, 73, *supra*). Covenant to pay principal and interest.

(*i*) This Precedent can be used whether or not an equitable mortgage of even date has been made by the portion trustees for raising the money, see last Precedent and notes thereto. A mortgagee will be advised not to advance the money unless the mortgage can be made free from equitable interests.

For registered land, Prec. No. IA will be adapted, adding Form No. 34, p. 95. Also add: "This charge is made pursuant to section sixteen of the Settled Land Act, 1925." Registered land.

Legal charge.

2. (1) and (2) (*As in Clause 2 of Prec. No. II of this Group, p. 143, supra, but referring to the premises described in the Schedule hereto.*)

(3) THIS Charge is made pursuant to section sixteen of the said Act, in priority to all the trusts of the Settlement mentioned in the recited Vesting Instrument and to all equitable interests subsisting or to arise thereunder.

Covenant to insure.

3. (*Form No. 18, p. 81, supra.*)

Liability.

4. (*Form No. 34, p. 95, supra, as to primary liability of the land.*)

Not to register.

5. (*Form No. 17, p. 80, supra.*)

Leasing.

6. (*Forms Nos. 40 and 41, p. 100, supra.*)

Acknowledgment.

7. (*Add acknowledgment by Borrower of right of Mortgagees to production, and see that a Land Charge is registered.*)

IN WITNESS, &c. (*Add Schedules.*) (*j*)

GROUP D.—MORTGAGES BY TRUSTEES FOR SALE AND PERSONAL REPRESENTATIVES.

No. I.

MORTGAGE *by the* TRUSTEES *holding land on trust for sale to raise* DEATH DUTY *under the* FINANCE ACT, 1894, *the* S. L. ACT, 1925, *s.* 71, *and* L. P. ACT, 1925, *s.* 16 (3). (*Legal Estate.*) (*k*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN E. T., of, &c., and G. T., of, &c. (hereinafter called the Borrowers), of the one

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Enforcement of equitable interests.

(*j*) Precedents VII to X have been inserted to illustrate the general principles applicable to the enforcement of equitable interests and to show that legal effect can be given thereto without disclosing the trusts. The reason why a mortgagee will insist on having a legal mortgage free from equitable interests is that when he comes to realise the purchaser would refuse to purchase if under the conveyance he became a tenant for life within S. L. Act, 1925, s. 20 (1) (ix), for thereafter he would have to make title under that Act, see L. P. Act, 1925, s. 42.

Mortgage by tenant for life to raise duty.

(*k*) If there were a tenant for life of full age, he would raise the money, see Prec. III, Group C, p. 144, *supra*. Under L. P. Act, 1925, s. 3, and S. L. Act, 1925, s. 16, the principle is simple.

Who should raise the duty.

Whoever has the legal estate, whether as absolute owners, tenants for life (including limited owners), statutory owners, trustees for sale, or personal representatives, will be the persons to raise the duty (whether it be estate duty or succession duty) by way of mortgage. If it is raised by tenants for life or statutory owners the money must be paid to or by the direction of the S. L. Act trustees; there will generally be no need for the mortgagees to pay the money direct to the Inland Revenue, though, if desired, this can be arranged. It must be paid to or in accordance with the directions of either a trust corporation or of not less than two individuals as trustees, and their receipt will be sufficient; on the other

part, and C. M., of, &c., and D. M., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

(1) (*Recite the Conveyance or Assent on trust for sale to the Borrowers or their predecessors in office, with any appointments of new trustees thereof. The Settlement or Will declaring the trusts of the proceeds of sale will not be recited*): Conveyance on trust for sale.

(2) By reason of the death of A. B., on the, &c., 19—, being a person beneficially interested in the rents and profits of the said property until sale, a sum of £—— became payable in respect thereof for certain death duties: Death of beneficiary.

(3) The Borrowers (*l*) have paid all the interest which has accrued in respect of the said duties out of the net rents and profits of the said property, and are desirous of raising the said sum of £——, and also the further sum of £——, for expenses incurred by them in respect of the said duties, including the costs incidental to this deed (making the aggregate sum of £——) by a mortgage of the property hereinafter described, being part of the property comprised in the recited Conveyance [Assent], and they have accordingly applied to the Mortgagees to advance the same, which the Mortgagees have agreed to do upon having the Payment of interest and agreement for advance.

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hand, when the money is raised by an absolute owner, the mortgagees will see that it is paid to the Inland Revenue. Though the money will thus be raised by the estate owners, this does not affect the liability of the persons for whose benefit the charge is made. They must account for the money to the estate owners or S. L. Act trustees.

As regards property vested in personal representatives, they can raise the duty by mortgage under their ordinary powers of administration, see Ad. of E. Act, 1925, s. 39. It is not necessary to specify the purpose for which the money is required. The charge is automatic, see *Lord Advocate* v. *Countess Moray* [1905], A. C. 531; 74 L. J. P. C. 122; but if the charge arises after 1925 it will not affect a purchaser for money's worth unless a land charge is registered: L. P. Act, 1925, s. 17; L. C. Act, 1925, s. 10, Class D (i). In the case of registered land, the charge does not affect a purchaser: L. R. Act, 1925, s. 73 (1) (15) (16). Personal representatives.

Where a settlement contains a covenant for the payment of a principal sum, the personal representatives of the covenantor, and not the settlement trustees, are liable for the estate duty in respect of the sum: *Re Gray* [1896], 1 Ch. 620; 65 L. J. Ch. 462; see also *Re Hacket* [1907], 1 Ch. 385; 76 L. J. Ch. 249. Covenant to settle.

The Fin. (1909-10) Act, 1910, s. 56, enables land to be given in lieu of money for estate duty. It is conceived that trustees should not avail themselves of that provision without the consent of the beneficiaries. Land given under s. 56 is to be dealt with as Parliament determines, and the part given might be used in such a way as to depreciate the rest of the estate. Conveyances to the Commissioners are free of stamp duty. This option is seldom, if ever, exercised. Fin. (1909-10) Act, 1910, s. 56. Conveyance to Commissioners of Inland Revenue.

(*l*) The interest on the duty cannot be raised on the land, as it is payable out of income: *Re Earl Howe's S. E.* [1903], 2 Ch. 69; 72 L. J. Ch. 461.

payment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

Payment of duty.

(4) The Mortgagees have on or before the execution of this deed at the request of the Borrowers, paid the said sum of £—— in discharging the said duties:

NOW, in pursuance of the said agreement and in consideration of the payment of the said sum of £—— (*amount of duties*) as aforesaid and of the further sum of £—— now paid by the Mortgagees to the Borrowers (the payment and receipt of which two sums of £—— and £——, making together the aggregate sum of £——, the Borrowers hereby respectively acknowledge), and in exercise of the powers for this purpose conferred by the Finance Act, 1894, the Law of Property Act, 1925, and of all other powers,(*m*) THIS DEED WITNESSETH as follows:—

Legal Charge.

1. (1) THE Borrowers, As Trustees, hereby charge by way of Legal Mortgage:

ALL the property described in the First Schedule hereto (being part of the property comprised in the recited Conveyance [Assent]),

WITH the payment to the Mortgagees on the —— day of —— next of the said aggregate sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum,

AND ALSO, so long as any principal money remains owing under this Charge after the said —— day of —— next, with the payment to the Mortgagees of interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year:

(2) PROVIDED that nothing herein contained shall render the Borrowers personally liable for the payment of the principal money and interest hereby secured:(*n*)

(3) FOR the purposes of this deed the legal right of redemption ceases on the said —— next (*six months from date*).

Assignment of statutory charge.

2. The Borrowers, As Trustees, hereby assign unto the Mortgagees:

(*m*) See Fin. Act, 1894, s. 9; L. P. Act, 1925, ss. 16 (3), 28; S. L. Act, 1925, s. 71.

Liability of trustee mortgagees.

(*n*) An express provision should be added to prevent the trustees from being personally liable for the principal and interest under the implied covenant, see Fisher, 6th ed., 7; apart from a covenant to pay, the mortgagor becomes a simple contract debtor: *Ancaster* v. *Mayer* (1784), 1 Br. C. C. 454, 464; *Quarrell* v. *Beckford* (1816), 1 Madd. 269, 278; *Yates* v. *Aston* (1843), 4 Q. B. 182; 12 L. J. Q. B. 160.

ALL the benefit of the charge created by section nine of the Finance Act, 1894, by reason of the payment of the said duties, but so far only as such charge affects the property hereinbefore charged,

TO HOLD unto the Mortgagees, subject to redemption on payment of the principal money and interest hereby secured. Habendum.

3 and 4. (*Add Form No.* 17, *covenant not to register title and any other special clauses required. Also acknowledgment of the right of the Mortgagees to production of the recited Conveyance or Assent with the probate or letters of administration and other documents in the Second Schedule. See that a land charge is registered if the deeds are not handed over.*)

IN WITNESS, &c. (*Add two Schedules, the first will contain a description of the property charged, the second a list of the deeds relating to the legal estate, including any probate or letters of administration granted after* 1925, *not handed over.*)

No. Ia.

MORTGAGE *by* TRUSTEES *for* SALE *to raise* DEATH DUTIES *where the land is registered under the* LAND REGISTRATION ACT, 1925.(*o*)

(*Adapt Prec. No. VII, p.* 113, *without recitals. Begin* "(*date*) In consideration of —— pounds (£——), paid by C. M., of, &c., and D. M., of, &c. (hereinafter called the Mortgagees), in discharging the duties payable by reason of the death on the —— of ——, 19—, of A. B., and of the further sum of —— pounds (£——) for expenses in respect of the said duties now paid by the Mortgagees to E. T., of, &c., and G. T., of, &c. (hereinafter called the Borrowers), the payment and receipt of which two sums of £—— and £——, making together the aggregate sum of £——, the Borrowers hereby respectively acknowledge, We, the Borrowers, hereby as Trustees charge the land comprised in the title above referred to" (*or as the case may be*) "(And hereby transfer to the Mortgagees subject to redemption all the benefit of the charge created by section nine of the Finance Act, 1894, by reason of the payment of the said duties, but so far only as such charge affects the property hereinbefore charged) with the payment," *&c., as in Prec. No. VII, p.* 114, *and add at the head of the special provisions,* "No covenant is hereby implied to pay the principal or interest secured by this charge" [*and if leaseholds*

(*o*) See note (*k*) to the last Precedent.

are included,(*p*) " or as to payment of rent or performance or observance of the covenants or conditions of the registered lease or as to indemnity in respect thereof "] *and Clause* 1 (2) *from the last Precedent and acknowledgment of right to production of documents, Clause* 7, *Prec. No. I, Group C, p.* 141, *and add schedule of documents.*)

No. II.

MORTGAGE *by* TRUSTEES *for sale for any purpose authorised by S. L. Act*, 1925, *or other statute or under an express power.* (*Legal Estate.*) (*q*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN E. T., of, &c., and G. T., of, &c. (hereinafter called the Borrowers), of the 1st part, A. B., of, &c. and C. B., of, &c. (*two of the persons if any of full capacity whose consent is made requisite to the execution of the trust for sale*), of the 2nd part, and D. M., of, &c., and H. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

Trust for sale. (1) (*Recite the Conveyance or Assent on trust for sale, showing, if the case, that the consent of A. B. and C. D. is thereby made requisite; or recite the facts from which it appears that the land has become vested in the Borrowers on an implied trust for sale; e.g., that on* 1*st January*, 1926, *it was vested in them as tenants in common or as joint tenants beneficially or as tenants by entireties or otherwise as the case requires; also show, if a fact, that an express power has been given to raise money for purposes not authorised by statute, or that the Borrowers are bound to execute a mortgage pursuant to L. P. Act*, 1925, *s.* 3) :

Purposes of the advance. (2) The Borrowers require to raise the sum of £—— for one or more of the purposes mentioned in section seventy-one of

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(*p*) See notes to Prec. No. Ia, p. 141, *supra*.

Powers for trustees to raise money. (*q*) A list of the authorised purposes is given in S. L. Act, 1925, s. 71. Money may have to be raised on the exercise of a paramount equitable power or for giving effect to an equitable charge which ought to have priority over the trust for sale: L. P. Act, 1925, s. 3. Equitable interests include interests in the proceeds of sale of land held on trust for sale: *ib.*, s. 205 (1) (x), see also s. 1 (3) (8.) A mortgagee is not concerned to see that the money is wanted or as to its application if the mortgage is purported to be made under any trust or power: T. Act, 1925, s. 17. As to express powers: *ib.*, s. 16. On a mortgage by beneficial owners holding on trust for sale, or where a general powers deed has been executed by the beneficiaries, it may be expedient to make use of S. L. Act, 1925, s. 16 (2), or where the beneficiaries (whether or not being the trustees) direct the transaction to be carried out: L. P. Act, 1925, s. 26 (3). As to consents to the exercise of powers, see L. P. Act, 1925, ss. 26, 28 (1).

Registered land. As to registered land, see and adapt last Precedent, omitting references to death duties.

the Settled Land Act, 1925 [*or*, for one or more of the purposes mentioned in the recited power, *or*, are bound pursuant to section three of the Law of Property Act, 1925, to execute such legal charge as is hereinafter contained *or otherwise as the case requires*] and also the further sum of £—— in respect of the expenses of this deed making together the aggregate sum of £—— :

Agreement for advance *or* to accept the security.

(3) The Mortgagees have (with the consent of the said A. B. and C. B., testified by their execution of this deed), agreed to advance the said sum of £— — to the Borrowers upon having the payment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing : [*or* have agreed to accept the charge hereby made in satisfaction of their equitable interests under section three of the Law of Property Act, 1925, as respects the property hereby charged] :

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid with the consent of the said A. B. and C. B., by the Mortgagees, to the Borrowers (the receipt of which sum the Borrowers hereby acknowledge) [*or* for giving effect to the statutory obligations of the Borrowers hereinbefore referred to] and in exercise of all statutory powers [*add if required:* including the power conferred by sub-section (2) of section sixteen of the Settled Land Act, 1925], THIS DEED WITNESSETH as follows :—

(*The operative parts will be the same as in the last Precedent leaving out clause* 2 (*assignment of charge for duties*) *save that if the Borrowers are beneficial owners holding on trust for sale the first clause will be a covenant to pay, Forms Nos.* 4 *and* 6, *pp.* 72, 73, *supra, to be followed by a legal charge, Form No.* 10, *p.* 74, *supra, referring to the covenant to pay.*)

IN WITNESS, &c.

PRELIMINARY NOTE TO MORTGAGES BY PERSONAL REPRESENTATIVES.

Statutory powers of personal representatives to raise money.

Executors and administrators, besides having all the powers of trustees for sale : Ad. of E. Act, 1925, s. 39 ; L. P. Act, 1925, s. 28, under which mortgages on the lines of the foregoing Precedents in this Group can be made, are able for the purposes of administration to make mortgages by deposit of documents : Ad. of E. Act, 1925, s. 39 (1) (ii). The restrictions imposed by S. L. Act, 1925, s. 13, do not apply to personal representatives.

Personal representatives in relation to settled land.

As regards settled land vested in the personal representatives, as may be the case where a settlement is made by will, or the

S. L. Act trustees have been granted representation limited to the settled land on the death of a former tenant for life, a purchaser of a legal estate is entitled (S. L. Act, 1925, s. 110 (3)) to act on the assumptions—

(i) If capital money is paid to the personal representatives that they are acting under their statutory powers for purposes of administration.

(ii) If it is paid to S. L. Act trustees by the direction of a personal representative, that he is acting under his statutory powers during a minority: see also s. 26 (2).

(iii) In any other case that the personal representative is acting under his statutory or other powers.

Power for sole personal representative to act.

Though, under L. P. Act, 1925, s. 27, capital money arising under a trust for sale or under the powers given to trustees for sale must, unless paid to a trust corporation, be paid to at least two trustees; this does not prevent a sole personal representative from giving a valid receipt: *ib.*, sub-s. (2).

Life interests and minorities.

But where there is a minority or a subsisting life interest, the court will not grant representation to less than two individuals: Jud. Act, 1925, s. 160; there is nothing to prevent representation from being granted solely to a trust corporation: *ib.* If there is a sole individual representative, the court may, during a minority or the subsistence of a life interest, grant representation to one or more additional personal representatives: *ib.*, sub-s. (2). In such cases not less than two executors should be appointed by a testator.

All personal representatives to concur.

In the case of real estate, including chattels real, all the subsisting personal representatives must concur in conveyances, which include mortgages, but in the case of executors, only those who prove have to concur: Ad. of E. Act, 1925, ss. 2, 3, 8, 55 (1) (iii).

Securing principal and annual sums.

For giving effect to beneficial interests, a personal representative may limit a term to trustees on trust to raise capital sums and may limit a rentcharge to give effect to an annuity: *ib.*, s. 40.

Power to raise legacy for spouse and money to redeem life interest.

On an intestacy the personal representative may raise the £1,000 given to the surviving spouse of the intestate, also the money required to redeem the life interest taken by such spouse and the costs of the transaction: *ib.*, s. 48.

Trustee Act applicable.

The T. Act, 1925, applies to personal representatives as well as to trustees: *ib.*, s. 68 (17).

Protection for mortgagees.

Thus under s. 17 a mortgagee advancing money on a mortgage purported to be made under a trust or power is not concerned

to see that the money is wanted or that no more than is wanted is raised, or as to the application of the money.

Endorsement of notice.

The effect of a conveyance (including a mortgage) by a personal representative in favour of purchaser (including a mortgagee) is prescribed by Ad. of E. Act, 1925, s. 36. The mortgagee may require notice of the mortgage to be endorsed on the probate or letters of administration : *ib.* ; he will inspect them to see that no notice of a previous conveyance or assent has been endorsed thereon : *ib.* If there is no such endorsement he will be protected by a statement by the personal representative that he has not made a previous conveyance or assent, save as against another purchaser : *ib.*

Freedom from debts, &c.

The fact that the mortgagee of a legal estate may have notice that all the debts and legacies have been paid will not affect his title : *ib.* The reason is that the personal representative may be acting during a minority or the subsistence of a life interest.

Revocation of representation.

The revocation of representation does not invalidate a previous conveyance : *ib.*, s. 37.

General powers.

Death duties.

The general powers of a personal representative in regard to real estate and chattels real are derived from s. 2 (1). As regards death duties he has power to raise them under L. P. Act, 1925, s. 16 (3), as a person accountable, confirming the principle in *Re Hadley* [1909], 1 Ch., at p. 32 ; 78 L. J. Ch. 254. It is conceived that after 1925 the mortgagee will not be concerned to see that the duty has been or will be paid, *cf. Re Conlon and Faulkener* [1916], 1 Ir. R. 241 ; he will take in priority to the charge unless a land charge has been registered by the Inland Revenue, in that case he should see that the duty is paid and take an assignment of the benefit of the charge.

Old law.

Debts, costs, distribution.

Personal representatives could always mortgage leaseholds vested in them to pay debts : *Re Morgan* (1881), 18 Ch. D., at p. 98 ; 50 L. J. Ch. 834 ; or to pay costs : *Re Whistler* (1887), 35 Ch. D. 561 ; 56 L. J. Ch. 827 ; *Re Verrell* [1903], 1 Ch. 65 ; 72 L. J. Ch. 44. *Semble*, they could do so to facilitate a division of the estate among the beneficiaries : *Re O'Donnell* [1905], 1 Ir. R. 406. Clearly they can do so after 1925 (L. P. Act, 1925, s. 28 (3)), for they have all the powers of trustees for sale. The above powers were extended by Pt. I of the L. T. Act, 1897, to real estate vesting in them under that Act. The position is similar under Ad. of E. Act, 1925, s. 2, but there will be no power for one of two or more representatives to deal with chattels real without the concurrence of the others.

Presumption. Personal representatives are always presumed to be acting in accordance with their duties or powers: *Re Venn & Furze* [1894], 2 Ch. 101; 63 L. J. Ch. 303; *Re Henson* [1908], 2 Ch. 356; 77 L. J. Ch. 598; but the presumption can be rebutted: *Re Verrell, supra.*

Settled land. Personal representatives can deal with settled land vested in them until a vesting assent is made: see S. L. Act, 1925, ss. 26, 110 (3).

Over-reaching powers. After 1925 personal representatives (L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39) will have all the over-reaching powers of trustees for sale: S. L. Act, 1925, s. 72.

Delegation. The power to grant powers of attorney given by T. Act, 1925, s. 25, is exercisable by a personal representative.

Registered land. The personal representatives of a sole deceased proprietor should be registered before the registered charge is made: L. R. Act, 1925, s. 41, though if necessary the representatives can, under s. 37, create a charge without being actually registered. If there are unextinguished manorial incidents the certificate from the steward that the fees, &c., have been paid should be produced to the registrar: L. P. Act, 1922, s. 129 (5) and (6).

No. III.

MORTGAGE *of* LAND *by* PERSONAL REPRESENTATIVES *to raise money for purposes of* ADMINISTRATION.(*r*) (*Legal Estate.*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN P. R., of, &c., and J. R., of, &c. (*personal representatives*) (hereinafter called the Borrowers), of the one part, and E. M., of, &c., and F. M., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Title. (1)–(3) (*In the case of freeholds recite the seisin of the testator or intestate, his death and probate or grant of administration to the Borrowers; do not recite the Will, if any. In the case of enfranchised land show that on 1st January, 1926, it became vested in the testator or intestate subject to the rights reserved to the lord by*

Powers. (*r*) See the note as to mortgages by personal representatives immediately preceding this Precedent, from which it appears that, in the absence of fraud, and subject to the usual certificates of search being obtained as against the borrowers and the deceased at the Land Registry, and where necessary in the local deeds registry, and to their showing no adverse entry, the mortgage can be carried out, for practical purposes, on the same lines as if the personal representatives were absolute owners. They will charge "as personal representatives" and will protect themselves from personal liability.

L. P. Act, 1922, 12*th Sch.*, *and to the manorial incidents saved by that Act. Recite the compensation agreement or notice to ascertain the compensation, if any. See recitals in Conveyances on Sale in Vol. I. If a Compensation Agreement was entered into in the lifetime of the testator or intestate, under which the lord's mineral and sporting rights were acquired and no compensation rentcharge was reserved then the land should be treated as freehold and there will be a simple recital of seisin. Recite the death, &c., as in case of freeholds. In the case of leaseholds recite the lease showing that it became vested in the testator or intestate, then recite the death, probate or letters of administration as above.*)

Agreement for advance.

(4) The Borrowers require the sum of £—— for purposes (*s*) connected with the administration of the estate of the said ——, and the Mortgagees have agreed to advance that sum upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrowers (the receipt of which sum the Borrowers hereby acknowledge) and in exercise of all statutory and other powers, THIS DEED WITNESSETH as follows:—

Legal charge.

1. (1) THE Borrowers, As Personal Representatives of the said ——, deceased, hereby charge by way of legal mortgage:

ALL the freehold properties described in the —— Schedule hereto:

[*or in the case of enfranchised land*—

ALL the properties described in the —— Schedule hereto but subject to the mineral and sporting rights of the lord reserved by the Law of Property Act, 1922, and to the manorial incidents saved by that Act (*t*) [*or*, but subject to the mineral and sporting rights of the lord reserved by the Law of Property Act, 1922, and to the terminable rentcharge reserved by the recited Compensation Agreement].]

Purposes of advance.

(*s*) The purposes need not be mentioned. The mortgagee is not concerned to inquire whether the debts, &c., have been discharged or not, but would not be safe in advancing the money if he had express notice of an intended breach of trust. This could seldom happen: Ad. of E. Act, 1925, s. 36 (8).

Endorsement.

(*t*) If the manorial incidents have not been extinguished, the mortgage must be produced to the steward for endorsement within six months and the customary payments must be made. In the case of registered land the existence of manorial incidents will be noted on the register: L. R. Act, 1925, s. 51; the registrar must be satisfied that the fines, &c., have been paid: L. P. Act, 1922, s. 129 (5) (6).

Registered land.

[*or in the case of leaseholds*—

ALL the premises comprised in and demised by the recited Lease.]

WITH the payment to the Mortgagees on the —— day of ——, 19—, of the sum of £——, with interest thereon from the date hereof, at the rate of £— per cent. per annum: AND ALSO, so long as any principal money remains due under this deed after the said —— day of ——, 19—, with the payment to the Mortgagees of interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year:

(2) PROVIDED that nothing herein contained shall render the Borrowers personally liable for the payment of the principal money and interest hereby secured:

(3) For the purposes of this deed the legal right of redemption ceases on the said —— next (*six months from date*).

Clause limiting amount of fire insurance.(*u*)

2. THE amount of the insurance of buildings upon the property hereby charged against loss or damage by fire which may be effected by the Mortgagees or the persons deriving title under them under the statutory power shall not exceed the sum of £——, [*or, in the case of Leaseholds*, the sum required to satisfy the covenant for insurance contained in the recited Lease].

3. (*Add Form No.* 17, *p.* 80, *and other special clauses, see Form No.* 11A, *p.* 76, *if required.*)

IN WITNESS, &c. (*v*)

No. IV.

MORTGAGE *of* REGISTERED LAND *by* PERSONAL REPRESENTATIVES *for administration purposes.*

[*Adapt Prec. No. VII, Group A, p.* 113, *substituting* "As Personal Representatives of X. Y., deceased," *for* "As Beneficial Owner."

Fire insurance in mortgage by personal representatives.

Mortgage of part of property comprised in a lease.

Deed.

(*u*) See L. P. Act, 1925, ss. 101 (1) (ii), 108. This clause is not required if the parties are satisfied with the two-thirds limit fixed by s. 108, or if there are no buildings requiring insurance.

(*v*) If the mortgage is of part of the property comprised in a lease and the rent has not been legally apportioned, see the power of attorney conferred by Form No. 11, p. 75, *supra*. It may possibly be doubted whether personal representatives or other persons in a fiduciary position are competent to give such a power, hence the mortgagees should insist on the rent being legally apportioned. Or if they are satisfied with a sub-term they could take a mortgage by sub-demise, see Forms Nos. 9 and 12, pp. 74, 77, *supra*.

If the deeds are not handed over, then a land charge must be registered in respect of the mortgage, and the borrowers must give the usual acknowledgment.

Add as one of the special clauses, "Nothing in this Charge shall render the Borrowers personally liable for the payment of the principal money and interest hereby secured and no covenants to pay shall be implied under the Act."

Add also, if necessary, acknowledgment of right to production of documents in the case of a possessory title and a Schedule thereof.]

SIGNED, SEALED, &c.

GROUP E.—MORTGAGES BY COMPANIES AND PUBLIC BODIES.

No. I.

DEED *by a* LIMITED COMPANY *in the nature of a* DEBENTURE *charging the* UNDERTAKING *and all the* PROPERTY, *present and future, of the* COMPANY *with the repayment of a* LOAN.(*w*) (*Equitable Interest.*)

Company acknowledge

THE —— Company, Limited, whose registered office is at ——

(*w*) A general floating charge cannot be registered as a charge under L. R. Act, 1925, s. 25; it does not identify the land by reference to the register. This and the next Precedent are intended to meet a case where a company wishes to borrow money on the security of all its property consisting of land and also of personal chattels. The debenture of an incorporated company is excepted from the operation of the Bills of Sale Act, 1882, by s. 17 (the exemption applies to Guernsey: *Clark* v. *Balm, &c., Co.* [1908], 1 K. B. 667; 77 L. J. K. B. 369); a charge by an incorporated company on personal chattels does not require to be registered under the Bills of Sale Act, 1878: *Re Standard Co.* [1891], 1 Ch. 627; 60 L. J. Ch. 292; but the exemption does not apply to all corporations: *G. N. Ry. Co.* v. *Coal Co-operative Soc.* [1896], 1 Ch., at p. 197; 65 L. J. Ch. 214. By the above Precedent the debenture is made a floating security on all the company's property, which would include personal chattels, and by the next Precedent the land of the company is mortgaged to the lender by way of further security. The company will, notwithstanding the debenture, be at liberty to dispose of their property (other than the land included in the mortgage) in the ordinary course of their business, and the debenture will attach only on the assets of the company existing at the time when a receiver is appointed or a winding-up takes place: *Re Florence Land Co.* (1875), 10 Ch. D. 530; 48 L. J. Ch. 137; *Re Colonial Trusts Corpn.* (1880), 15 Ch. D. 468, and see *Illingworth* v. *Houldsworth* [1904], A. C. 355; 73 L. J. Ch. 739.

Effect of debenture on company's undertaking.

Though a debenture is generally one of a series, this is not necessary: *Levy* v. *Abercorris Slate Co.* (1888), 37 Ch. D., at p. 264; 57 L. J. Ch. 202; *Robson* v. *Smith* [1895], 2 Ch. 118; 64 L. J. Ch. 457. As the charge only crystalises when a receiver is appointed the provisions of L. P. Act, 1925, s. 103, are excluded.

This deed must be registered under s. 93 of the Companies (Consolidation) Act, 1908: *Illingworth* v. *Houldsworth* [1904], A. C. 355; 73 L. J. Ch. 739. Registration must take place within twenty-one days from the date of execution of the instrument of charge, not from the date on which any money may be subsequently advanced: *Esberger* v. *Capital & Counties Bank* [1913], 2 Ch. 366; 82 L. J. Ch. 576. Such registration operates as the registration of a land charge: L. C. Act, 1925, s. 10 (5).

Registration.

receipt of money lent and covenant to repay it.

(hereinafter called the Company), hereby acknowledge that they have this —— day of —— received the sum of £—— from A. B., of, &c. (hereinafter called the Mortgagee), by way of loan.

1. THE Company hereby covenant with the Mortgagee to pay to him on the —— day of —— next the sum of £——, with interest thereon in the meantime at the rate of £— per cent. per annum:

AND ALSO, so long after that date as the said principal sum shall remain unpaid, to pay to the Mortgagee interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Floating charge.

2. THE Company, As Beneficial Owners, hereby charge their undertaking and all their property and assets, both present and future (including their uncalled capital), with the payment of the said principal sum and interest in accordance with the foregoing covenant, to the intent that this Debenture shall be a floating security on the said undertaking and property, but so that the Company shall not be at liberty to create any debenture, mortgage or charge in priority to this Debenture, without the consent of the Mortgagee or the persons deriving title under him.(*x*)

3. THE provisions of section one hundred and three of the Law of Property Act, 1925, shall not apply to this Debenture.

IN WITNESS, &c.

No. II.

MORTGAGE *of* FREEHOLD PROPERTY *by a* LIMITED COMPANY (*to accompany the Debenture in the last Precedent*).(*y*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN the —— Company, Limited, whose registered office is at —— (hereinafter

(*x*) See *Wheatley* v. *Silkstone, &c., Co.* (1885), 29 Ch. D. 715; 54 L. J. Ch. 778; *Re Connolly Bros.* [1912], 2 Ch. 25; 81 L. J. Ch. 517.

(*y*) As a general rule mortgages by limited companies are in the same forms as mortgages by individuals. This deed should be produced to the Registrar with the debenture for registration: Companies (Consolidation) Act, 1908, s. 93. The section also applies to the mortgage of a ship: *Cunard Steamship Co.* v. *Hopwood* [1908], 2 Ch. 564; 77 L. J. Ch. 785. Company Precedents are generally outside the scope of this work. The mortgage should be stamped as a collateral security and the stamp adjudicated.

Registered land.

A charge on these lines could be registered under L. R. Act, 1925, s. 25, provided that it complies with the requirements of that section.

called the Company), of the one part, and A. B., of, &c. (hereinafter called the Mortgagee), of the other part: WHEREAS:—

Seisin of Company.

(1) The Company are seised in fee simple free from incumbrances of the property hereinafter described:

Advance to Company on security of debenture.

(2) The Mortgagee has advanced to the Company the sum of £——, and in consideration thereof the Company have issued a Debenture to the Mortgagee bearing even date with but executed before this deed, whereby the Company covenanted to pay the sum of £—— to the Mortgagee on the —— day of —— next, with interest thereon at the rate of £— per cent. per annum, and also, so long as the said principal sum should remain unpaid after that date, to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: And the Company thereby charged their undertaking and all their property and assets, present and future, with the payment of the said sum of £—— and the interest thereon to the intent that the said Debenture might be a floating security on the said undertaking and property:

Agreement for further security.

(3) On the treaty for the advance of the said sum of £—— it was agreed that the repayment thereof with interest should be further secured in manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

1. (1) THE Company, As Beneficial Owners, hereby charge by way of legal mortgage

ALL THAT, &c.

WITH the payment to the Mortgagee of the principal money and interest covenanted to be paid by the recited Debenture.

(2) FOR the purposes of this Charge the legal right of redemption ceases on the said —— day of ——, 19—.

2. (*Add Form No.* 17, *p.* 80.)

3. (*Add Form No.* 18, *p.* 81, *and other clauses required.*)

IN WITNESS, &c.

No. III.

MORTGAGE *of* RATES *by a* DISTRICT COUNCIL *to secure the repayment by* INSTALMENTS *of* MONEY *borrowed under the powers of the* PUBLIC HEALTH ACT, 1875.(*z*)

BY VIRTUE of the Public Health Act, 1875 (*add other Act*

Powers to charge rates.

(*z*) See s. 233. A mortgage is not essential on every exercise of the power of borrowing conferred by the Act, see *R.* v. *Locke* [1911], 1 K. B. 680; 80

(*if any*) *under which money is borrowed*), and of an Order under the seal of the Ministry of Health dated the —— day of ——,

Parties.

THE Urban District Council of ——, in the County of —— (hereinafter called the Council), in consideration of the sum of £—— now paid by A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), to N. O., the treasurer of the Council, do hereby grant and assign unto the Mortgagees such proportion of the rates arising or accruing by virtue of the said Act[s] from the general district rates of the said district, and of all other rates (if any) out of which the Council are authorised to defray expenses incurred by them in the execution of the said Act[s] as the said sum of £—— doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates :

District council assigns rates to Mortgagees until principal money with interest be repaid.

Habendum.

TO HOLD unto the Mortgagees from the date hereof until the said sum of £——, with interest thereon at the rate of £— per cent., shall be fully paid and satisfied :

AND IT IS HEREBY DECLARED (*a*) as follows :—

Principal to be paid by instalments.

(1) THE sum of £——, being one-sixtieth part of the said principal sum of £——, together with interest on so much of the said principal sum as shall for the time being remain unpaid, shall be paid on the —— day of —— next and on every subsequent —— day of —— and —— day of —— up to and including the —— day of ——, 19—, in accordance with the Schedule hereto :

(2) EVERY such payment as aforesaid shall be made to the Mortgagees, or the persons deriving title under them, at the

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L. J. K. B. 358. As to the different cases in which rates may be mortgaged, see 41 Sol. J. 709, and see County Council Mortgages Act, 1909. As to bankers' overdrafts of local authorities, see articles in 47 Sol. J. 330, 348.

Principal and interest combined.

(*a*) If the repayment is to be by equal payments of principal and interest combined, substitute as follows :—

AND IT IS HEREBY DECLARED as follows :—

(1) THE said sum of £—— shall be repaid to the Mortgagees, with interest thereon at the rate aforesaid, by thirty equal yearly [*or* by sixty equal half-yearly] instalments of £—— each of principal and interest combined, the first instalment to be paid on the —— day of ——, 19—, and a subsequent instalment to be paid on every —— day of —— [and —— day of ——] up to and including the —— day of ——, 19—, in accordance with the Schedule hereto :

(2) EVERY such payment, &c. (*continue as in text*).

—— Bank, or at such other bank or place as they shall from time to time by writing direct.

IN WITNESS whereof the Council have hereunto affixed their common seal, and the Mortgagees have hereunto set their hands and seals, this —— day of —— 19—.

THE SCHEDULE.

No. of Payment.	Date of Payment.	Amount of Instalment of Principal Money.	Interest.	Total.

The common seal of the above-named District Council was hereunto affixed at a meeting of the said Council held on the —— day of ——, 19—, in the presence of
X. Y.,
Clerk to the said Council.

Common seal. (L.S.)

(*Receipt of treasurer of District Council to be written at foot of above Mortgage.*)

RECEIVED the —— day of ——, 19—, for and on behalf of the —— District Council, from the above-named A. B., C. D., and E. F., the sum of £——, the consideration money above expressed to be paid by them to me.

Witness. N. O.,
Treasurer of the said District Council.

No. IV.

STATUTORY DECLARATION *by the* CLERK *to the* DISTRICT COUNCIL *to accompany the last* PRECEDENT.(*b*)

I, X. Y., of ——, do solemnly and sincerely declare as follows :—

That declarant is Clerk to District Council.

1. I AM the duly appointed Clerk to the Urban District Council of ——, in the County of —— (hereinafter called the Council), and I have the custody of the books of the Council.

(*b*) A person lending money to a local authority under the provisions of the Public Health Act, 1875, should require the production of the order of the Ministry of Health authorising the loan, and the delivery to him of copies (certified by the clerk) of such order and of the resolutions of the council as to the borrowing of the money, and the affixing of the common seal to the

Matters to be attended to by mortgagees of district rates

Amount of outstanding loans.

2. THE outstanding loans of the Council now remaining due on the credit of the general district rates amount together to £——, and no more. The particulars of such loans are correctly stated in the Schedule hereto.

Resolution of Council to borrow money.

3. I WAS present at a meeting of the Council, held on the —— day of ——, 19—, when it was resolved that the offer of A. B., C. D., and E. F. to lend to the Council the sum of £—— (being the amount of the loan authorised by the order of the Ministry of Health dated the —— day of ——, 19—) be accepted.

4. I WAS also present at a meeting of the Council, held on the —— day of ——, 19—, when it was resolved that the common seal of the Council be affixed to the mortgage to the said A. B., C. D., and E. F. then produced, and the common seal was accordingly affixed thereto at the said meeting in my presence.

AND I make, &c.

THE SCHEDULE.

Particulars of loans.

DECLARED, &c. X. Y.

SECTION II.

MORTGAGES ARRANGED ACCORDING TO THE CHARACTER OF THE MORTGAGEES.

GROUP A.—MORTGAGES TO CO-OWNERS, MARRIED WOMAN TRUSTEE, AND WHERE THE MONEY IS ADVANCED UNDER AN ORDER OF THE COURT.

No. I.

DECLARATION *of* TRUST *of* MONEY SECURED *on* MORTGAGE, *and* CONTRIBUTED *by* DIFFERENT LENDERS *in* UNEQUAL PROPORTIONS, *the* MORTGAGE *having been taken in the* NAMES *of* FOUR TRUSTEES NOMINATED *by the* LENDERS.(*c*) (*Equitable Interest.*)

Parties.

THIS DECLARATION OF TRUST is made, &c., BETWEEN I. K., of, &c. (*one Contributory*), of the 1st part, L. M., of, &c., and

under Public Health Act, 1875.

mortgage: *A.-G.* v. *Tottenham U. D. Council* (1910), 73 J. P. 437. He should also examine the register of mortgages kept by the council under s. 237 of the Act. He may also reasonably ask for a statutory declaration to the effect of the above Precedent.

Under s. 295 the order of the Ministry is binding and conclusive as to all matters to which it refers.

(*c*) The mortgage in this case is supposed to have been in the form of Prec. I, Sec. I, Group A, p. 105, *supra*, with the variations given in that

N. O., of, &c. (*other Contributories*), of the 2nd part, P. Q., of, &c., and R. S., of, &c. (*other Contributories*), of the 3rd part, T. V., of, &c., the wife of U. V., of, &c. (*another Contributory*), of the 4th part, and A. B., of, &c., C. D., of, &c., E. F., of, &c. and G. H., of, &c. (hereinafter called the Mortgagees), of the 5th part: WHEREAS:—

Legal charge of even date for £5,000.

(1) By a Legal Charge (hereinafter called the Mortgage) bearing even date with but executed before this deed, and made between X. Y., of, &c., of the one part, and the Mortgagees of the other part, in consideration of the sum of £5,000 therein expressed to be paid to the said X. Y. by the Mortgagees out of money belonging to them on a joint account, divers lands in the Parish of ——, in the County of ——, were charged by way of legal mortgage for securing the payment on the —— day of —— by the said X. Y. to the Mortgagees of the principal sum of £5,000, with interest thereon at the rate of £— per cent. per annum:

That £5,000 was contributed in different shares.

(2) The said sum of £5,000 was in fact money contributed by the parties hereto of the first four parts (hereinafter collectively called the Contributories) in the shares and amounts following (that is to say), the sum of £1,000 (part thereof) by the said I. K., the sum of £1,500 (other part thereof) by the said L. M. and N. O., as the trustees of a Settlement dated the —— day of ——, and made upon the marriage of —— with ——, the sum of £2,000 (other part thereof) by the said P. Q. and R. S., as the trustees of the Will of —— (deceased), dated the —— day of ——, and the sum of £500 (residue thereof) by the said T. V., being money belonging to her as her separate property:

Precedent. After 1925 all mortgages should be taken on joint accounts, see L. P. Act, 1925, s. 111; a special joint account clause would otherwise be required; notice of a trust of the mortgage debt does not affect persons dealing in good faith with the mortgagees: *ib.*, s. 113. As to mortgages of registered land in favour of two or more persons, see L. R. Act, 1925, s. 32; the mortgage term, if any, must be taken jointly, it cannot be held in undivided shares whether or not the title to the land is registered. The rights of a contributory could be protected by a caution in the case of registered land, but if there are two or more mortgagees this can seldom be required.

Notice of trusts.

Contributory mortgages.

It will be borne in mind that it is a breach of trust for trustees to lend on a contributory mortgage unless expressly authorised so to do: *Re Dive* [1909], 1 Ch. 328; 78 L. J. Ch. 248. There is nothing in the T. Act, 1925, to alter this rule. Where no such power is given to trustees, the alternative is to take separate legal first charges over parts, with supplementary second or subsequent charges in aid thereof over other parts. The entire mortgage may be made to trustees, not being more than four: L. P. Act, 1925, s. 34 (2) proviso; T. Act, 1925, s. 34; and they can give a separate acknowledgment that they hold part of the mortgage debt in trust for a stranger to the main trust.

Number of mortgagees.

NOW THIS DEED WITNESSETH and it is hereby declared as follows :—

Declaration by Trustees that they will stand possessed of £5,000.

1. THE Mortgagees shall stand possessed of the said sum of £5,000 secured by the Mortgage, and the interest thereon, Upon the trusts following (that is to say)—

As to part for I. K.

(1) AS to the sum of £1,000 (part of the said principal sum) and the interest thereon, In trust for the said I. K. absolutely :

As to other part for L. M. and N. O.

(2) AS to the sum of £1,500 (other part of the said principal sum) and the interest thereon, In trust for the said L. M. and N. O., as the trustees of the said Settlement of the —— day of —— :

As to other part for P. Q. and R. S.

(3) AS to the sum of £2,000 (other part of the said principal sum) and the interest thereon, In trust for the said P. Q. and R. S., as the trustees of the said Will of the said —— :

And as to residue for T. V.

(4) AND as to the sum of £500 (residue of the said principal sum) and the interest thereon, In trust for the said T. V. as her separate property :

No priority between *cestuis que trust*.

PROVIDED that the Contributories shall be entitled to their several and respective shares in the said principal money and interest *pari passu*, and without preference or priority.

Declaration that Trustees shall hold securities in trust for Lenders according to their shares and interests.

2. THE Mortgagees shall stand possessed of the charge created by the Mortgage (subject to the right of redemption subsisting therein), and all other the securities for the said principal sum of £5,000 and the interest thereon, In trust for the Contributories according to their several shares and interests in the said principal money and interest :

PROVIDED that if in right of the Mortgage or by reason of foreclosure or under the Limitation Acts or otherwise the fee simple or any term or other legal estate in land shall be or become vested in the Mortgagees the legal estate so acquired shall be held by the Mortgagees on trust for sale and the net proceeds and the net rents and profits until sale shall be held, In trust for the Contributories according to their former shares or interests in the principal money and interest in accordance with section thirty-one of the Law of Property Act, 1925.

Mortgagees to call in debt if requested by any of the Contributories.

3. IF any one or more of the Contributories shall at any time request the Mortgagees to require payment of the said mortgage debt, or to enforce such payment by exercising the statutory power of sale, or by foreclosure proceedings or otherwise, the Mortgagees shall comply with such request unless the other Contributories or some or one of them shall be willing to pay to

the person or persons making such request his or their share of the said mortgage debt upon having a transfer of the equitable interests in such share, or unless some other arrangement can be made between the Contributories in relation thereto.

Purchaser not concerned to see to application of purchase-money.

4. PROVIDED that in accordance with section one hundred and thirteen of the Law of Property Act, 1925, upon any sale of the property charged by the Mortgage under the statutory or other power of sale affecting the same, or upon any transfer or other dealing with the said principal money or interest secured by the Mortgage or the security therefor, or upon the exercise of the statutory powers of leasing or other powers, no purchaser, lessee or other person dealing with the legal mortgagee or mortgagees for the time being shall be concerned to see to the application of the purchase-money or of the money paid on a transfer or other dealing or to inquire into the trusts hereof, and accordingly it shall not be necessary to disclose this deed on any such sale or other dealing as aforesaid.

5. IN this deed the expression "the Mortgagees" includes the persons legally deriving title under them and the expression "Contributories" includes the persons respectively deriving title under them.

IN WITNESS, &c.

No. II.

DECLARATION *of* TRUST *of* PART *of a sum of* MONEY *secured on a* CONTRIBUTORY MORTGAGE.(*d*) (*Equitable Interest.*)

Parties.

THIS DECLARATION OF TRUST is made, &c., BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the one part, and I. K., of, &c., of the other part: WHEREAS:—

(1) (*Recite Legal Charge, as in last Precedent for* £10,000):

Title to part of debt.

(2) The sum of £2,000 (part of the sum of £10,000 in the Mortgage expressed to be paid by the Mortgagees) was in fact paid out of money belonging to the said I. K.:

NOW THIS DEED WITNESSETH and it is hereby agreed as follows:

Declaration of trust.

1. THE Mortgagees shall stand possessed of the sum of £2,000 (part of the said principal sum of £10,000 secured by the Mort-

(*d*) See note to last Precedent.

gage) and the interest thereon, In trust for the said I. K. absolutely, and so that as between the said sum of £2,000 and the interest thereon, and the residue of the said sum of £10,000 and the interest thereon, there shall be no preference or priority.

(*Adapt clauses* 2, 3, 4 *and* 5 *of last Precedent.*)

IN WITNESS, &c.

No. III.

DECLARATION *of* TRUST *of* PART *of a* SUM OF MONEY *secured on a* CONTRIBUTORY MORTGAGE *where the Mortgage contains a* PROVISION *for the* REDUCTION *of* RATE *of* INTEREST *on punctual payment.* [*Variation where the* RIGHT OF REDEMPTION *has been* SETTLED.](*e*) (*Equitable Interest.*)

Parties.

THIS DECLARATION OF TRUST is made, &c., BETWEEN A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the one part, and I. K., of, &c., and L. M., of, &c. (*one set of Contributories, being trustees*), of the other part: WHEREAS:—

(1) (*Recite Mortgage to X. Y. for* £10,000 *containing a provision for reducing rate of interest if punctually paid, defining it as the Mortgage*):

[(2) (*Also a settlement with a vesting instrument of the right of redemption of the mortgaged property*)]:

(3) (*The transfer of the Mortgage to the Mortgagees*):

Mortgage money was contributed by various persons.

(4) The sum of £10,000 so expressed to be paid by the Mortgagees was contributed by several persons or classes of persons in various amounts to the intent that the same might be invested by the Mortgagees on the security of the Mortgage:

Part was contributed by persons named.

(5) The sum of £2,000, part of the said sum of £10,000, was contributed by the said I. K. and L. M. out of money belonging to them on a joint account, and the Mortgagees have agreed to execute such declaration of trust in favour of the said I. K. and L. M. as is hereinafter contained:

Mortgagees have given similar declaration to other Contributories.

(6) The Mortgagees have executed or are about to execute similar declarations of trust in favour of the other persons or classes of persons by whom the remainder of the said sum of £10,000 was contributed as aforesaid:

Certificate of ownership of part of mortgage debt.

(*e*) Under this scheme a declaration of trust in the nature of a certificate will be given to each class of contributories. Special care should be taken in the selection of the trustees (not more than four) or trust corporation in whom the mortgage is to be vested. See also note to Prec. No. I.

NOW THIS DEED WITNESSETH and it is hereby agreed as follows:—

Declaration by Mortgagees that they hold part of the mortgage debt in trust.

1. THE Mortgagees shall stand possessed of the sum of £2,000 (part of the said sum of £10,000 secured by the Mortgage), and of a proportionate part of the interest of the said sum of £10,000, In trust for the said I. K. and L. M. as joint tenants, but *pari passu* with and without any preference or priority to or over the several contributories of the sum of £8,000 (the residue of the said sum of £10,000) in respect of their several parts or proportions of the said residue, or of the interest thereon.

Proviso for indemnity of Mortgagees.

2. THE Mortgagees and their respective estates and effects shall not be answerable to the said I. K. and L. M. or the persons deriving title under them for any defect or insufficiency of the aforesaid security, or for omitting or neglecting until required so to do by the said I. K. and L. M. or the persons deriving title under them to call in or enforce payment of the said sum of £10,000 or any part thereof, notwithstanding the time for the payment thereof shall have arrived or have passed, nor for accepting interest on the said sum of £10,000 at the said reduced rate of £— per cent. per annum, notwithstanding such interest may not be paid at or within the time for that purpose fixed by the Mortgage.

Power for Mortgagees to consent to exercise of powers conferred on Borrower by S. L. Acts.

3. THE Mortgagees or the persons deriving title under them shall be at liberty at any time and from time to time during the continuance of the said security, if they shall think fit, and without any further consent on the part of the said I. K. and L. M. or the persons deriving title under them.(*f*)

[(1) To consent to the exercise by the tenant for life or other the person or persons having for the time being the powers of a tenant for life under the said Settlement of all or any of the powers conferred on him or them by the Settled Land Act, 1925.]

To release part of mortgaged property.(*f*)

(2) To release from the said debt of £10,000 or any part thereof any part of the property for the time being charged

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Variation of securities by fiduciary owners.

(*f*) As to powers for trustees to settle claims and execute releases: T. Act, 1925, s. 15. A tenant for life may, with the consent of an incumbrancer, vary the rate of interest and the provisions of a mortgage affecting the settled land: S. L. Act, 1925, s. 70; hence trustees for sale may agree to similar variations of a mortgage affecting the land held on trust for sale: L. P. Act, 1925, s. 28.

The principle on which trustee mortgagees agree to vary a security subject to a trust is that if they did not give effect to the transaction the mortgagor would give notice to pay them off. The trustees must see that the security

therewith, on being satisfied that the other property for the time being charged therewith will be a sufficient security for the same, or on other lands being substituted for the released properties or some of them, or on any other terms which they may think reasonable.

4. (*Adapt clause* 4 *of Prec. I of this Group.*)

IN WITNESS, &c.

No. IV.

MORTGAGE *to* TRUSTEES, *one of whom is a* MARRIED WOMAN.(*g*) (*Legal Estate.*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., the wife of J. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter collectively called the Mortgagees), of the other part: WHEREAS:—

Seisin of Borrower. (1) (*Recite seisin of Borrower, Form No.* 1, *p.* 68):

Agreement for advance. (2) (*Form No.* 2A, *p.* 71):

NOW, &c. (*the operative parts will be the same as in any other of the foregoing Precedents applicable to the case where the money is advanced on a joint account. See particularly Group A*).

IN WITNESS, &c.

No. V.

MORTGAGE *where the* MONEY *is advanced under an* ORDER *out of* FUNDS *in* COURT. (*Legal Estate.*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Seisin of Borrower. (1) (*Form No.* 1, *p.* 68):

Agreement for loan to be advanced out of money in Court. (2) The Mortgagees agreed to advance to the Borrower the sum of £—— upon having the payment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing,

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left, after the variation is made, is such that they could have advanced the money thereon. As to the protection afforded to trustees: T. Act, 1925, ss. 8, 9, 10, 57, 61, 62.

Mortgage to married women trustees. Effect of L. P. Act, 1925, s. 170. (*g*) Under L. P. Act, 1925, s. 170, mortgages to married women trustees can properly be made in the same form as to any other trustees; this section confirms *Re Leslie* [1911], 1 Ch. 611; 80 L. J. Ch. 486. It applies whether or not the title to the land is registered.

it being intended that the said sum of £—— should be advanced out of money in Court under an Order to be obtained for the purpose, being the Order next hereinafter recited:

Recital of Order authorising the investment of funds in Court on the security of the Mortgage.

(3) By an Order (*h*) of the Chancery Division of the High Court of Justice made on, &c., In the matter of the estate of X. Y., deceased (*Letter No. and Year*), it appearing that it was for the benefit of the persons interested under the Will of the said X. Y. that the sum of £—— cash in Court to the credit of the said matter should be invested on the security of the property hereinafter described, an inquiry was directed as to whether a good title could be made thereto, and in case a good title could be made a charge thereon by way of legal mortgage was directed to be settled by the Judge, and the said sum of £—— to be paid out of Court accordingly:

Master's certificate as to title.

(4) The Master attached to the Chambers of the said Judge duly made his Certificate dated the —— day of —— and filed on the —— day of ——, from which it appeared that a good title could be made to the property hereinafter described, and that the proper charge by way of legal mortgage thereof had been settled and that the Borrower was the person by whom the same was to be executed before the said sum of £—— was paid out of Court:

Master's signature.

(5) This Deed is, as appears from the signature of the said Master in the margin hereof, the Mortgage referred to in the said Certificate:

NOW, in pursuance of the said agreement and in consideration of the sum of £—— to be paid pursuant to the said Order to the Borrower (a receipt for which sum is intended to be indorsed hereon and to be signed by the Borrower), THIS DEED WITNESSETH as follows:—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants with the Mortgagees to pay into Court to the credit of the matter aforesaid on the —— day of —— next the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, AND also so long, &c. (*Form No.* 6, *p.* 73).

Legal charge.

2. (*Form No.* 10, *p.* 74.)

3. (*Add clauses as to fire insurance, &c., as required. See Forms, and Prec. I, Sec. I, Group A., p.* 105, *supra.*)

(*h*) For form of summons, see Daniell's Chancery Forms, 6th ed., 584, and for form of order, Seton, 7th ed., 1138. The mortgage is executed before the money is paid out.

4. (*Also add Form No.* 28, *p.* 90, *mortgagee to accept new security under the approval of the Court.*)

IN WITNESS, &c.(*i*)

No. Va.

MORTGAGE *where the* LAND *is registered and the money is advanced out of Funds in Court.*(*j*)

(*Adapt Prec. VII, Sec. I, Group A*, p. 113) :

(*Date*) In consideration of —— pounds (£——) to be paid to me pursuant to an order of the Chancery Division of the High Court of Justice, made on the —— of ——, 19—, in the matter of the Estate of X.Y., deceased (*letter, number and year*), I, A. B., of, &c. (*continue as in Prec. VII down to* " with the payment " *and then continue* " into Court to the credit of the matter aforesaid on the —— of ——, 19—," &c., *as in Prec. VII, and add at the head of the special provisions* : " C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), shall be registered as proprietors of this Charge under the Land Registration Act, 1925, and the covenants implied by statute shall take effect accordingly." Signed, sealed, &c.

GROUP B.—MORTGAGES TO BANKERS, BUILDING AND FRIENDLY SOCIETIES, AND OTHER PUBLIC BODIES.

No. I.

MORTGAGE *of* LAND *to a* BANKING COMPANY *to secure* BALANCE *of* CURRENT *or other* ACCOUNT.(*k*) (*Legal Estate.*)

Parties. THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and

Trusts of mortgage debt.

(*i*) It is immaterial, in regard to the title to the land, that it is disclosed that the mortgage money is held on trust : L. P. Act, 1925, s. 113, but in the case of money lent under an order of the court it has, in accordance with the covenant, to be repaid into court, not to the mortgagees.

(*j*) No express provision is made in the L. R. Act, 1925, or L. R. R., 1925, for a charge of this nature. Presumably either—(1) The court will appoint the trustees of the fund to act as proprietors of the charge, or (2) the charge will be made by a mortgage as in the last Precedent, which will be protected on the register by a restriction as the court may direct. The above Precedent is adapted to the first alternative.

In either case, it is submitted that it will be for the consideration of the court whether to authorise the payment out of the money immediately on the execution of the instrument or whether to require registration or other protection to be effected first.

Stamp. (*k*) This instrument will be a security for such an amount as the stamp duty at 2*s.* 6*d.* per cent. will cover. If the deeds are not handed over, a land

the —— Bank, Limited, whose registered office is at —— (hereinafter called the Mortgagees), of the other part : WHEREAS :—

(1) The Borrower is seised in fee simple in possession free from incumbrances of the property hereinafter described : Seisin of Borrower.

(2) The Borrower has an account current with the Mortgagees, and they have consented to make advances to him or give him other accommodation upon having such security for the balances from time to time owing on any such account as hereinafter appearing : Agreement by bankers to give accommodation.

NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows :—

1. THE Borrower hereby covenants with the Mortgagees that the Borrower will on demand, or if no demand is made in his lifetime then his personal representatives or persons deriving title under him, will on his death, pay to the Mortgagees the balance (if any) then owing from the Borrower on his account current with the Mortgagees for cheques, notes, or bills drawn, accepted or indorsed by him, or for further advances made to him, or for his accommodation or benefit, whether on loan or current account or otherwise howsoever (including interest with half-yearly rests, commission and other customary charges), and will also pay interest on such balance from the date of such demand or death (as the case may be) at the rate of £— per cent. per annum. Covenant by Borrower to pay money owing on account current.

2. (1) (*Form No.* 10, *sub-clause* (1), *p.* 74, *supra*.) Legal charge.

(2) FOR the purposes of this Charge the legal right of redemption shall cease immediately before the date of the death of the Borrower or the date of any such demand as aforesaid whichever first happens.

3. THE Borrower hereby covenants (*Form No.* 18, *p.* 81, *supra*). Covenant by Borrower for insurance.

4. (1) ANY demand for payment of the balance intended to be hereby secured may be made by a notice in writing signed by any director, manager, or cashier on behalf of the Mortgagees. As to how notice demanding payment is to be served.

(2) THE provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to every such notice.

5. (1) THE power of sale conferred on mortgagees by the Law of Property Act, 1925, shall take effect as regards this Statutory power of sale to apply, with a variation.

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charge or a memorial should be registered. As to mortgages to secure current accounts or further advances : L. P. Act, 1925, s. 94.

Charge as if section one hundred and three of that Act had been omitted from that Act, but the said power shall not be exercised unless default is made in payment of any money for one month after it has become payable under the foregoing covenant.

(2) UPON any sale made under the said statutory power as varied by this Charge a statutory declaration by a director, manager, or cashier of the Mortgagees that payment of the money has been duly demanded and not paid shall be conclusive evidence of such demand and non-payment in favour of any purchaser, lessee or other person deriving title to the property under any of the statutory powers.

6. (*Add special clauses as required ; see List of Forms, p.* 67.)

IN WITNESS, &c.(*l*) [*Add Schedules as required.*]

No. II.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *to a* BANKING COMPANY *by a Customer of the Bank to secure* CURRENT *and other* ACCOUNTS. (*Legal Estate.*)

Parties. THIS LEGAL CHARGE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower, which expression where the context admits includes the persons deriving title under him), of the one part, and —— Bank Limited, whose registered office is at —— (hereinafter called the Mortgagees, which expression, where the context admits, includes the persons deriving title under them), of the other part :

WITNESSETH as follows :—

Covenant to pay. 1. (1) THE Borrower hereby covenants with the Mortgagees to pay to them on demand or on the death of the Borrower (which first happens) all money and liabilities which now are or at any time hereafter may be due, owing or incurred from or by the Borrower to the Mortgagees or for which the Borrower may be or become liable to them on any current or other account or in any manner whatever (whether alone or jointly with any other person and in whatever name, style or firm), Together with interest to date of repayment, commission, banking charges, law and other costs, charges and expenses (such interest being computed, both before and after any such demand, according

(*l*) The closing of an account may bring the power of sale into force: *Berry* v. *Halifax, &c., Co.* [1901], 1 Ch. 188; 70 L. J. Ch. 85. This Precedent can be varied for the purposes of enfranchised land and leaseholds, see the Precedents in Group A, *supra*, or may be made applicable to land of any tenure. Also Prec. No. IV, *infra*.

to the usual mode of the Mortgagees with current accounts, and that notwithstanding any account intended to be hereby secured may from any cause cease to be carried on as an ordinary banking account, and so that interest shall be payable at the rate so provided as well after as before any judgment obtained hereunder):

(2) THE date of demand or the date of the death of the Borrower (which first happens) is hereinafter called "the redemption date."

Legal charge.

2. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage, ALL AND SINGULAR the property mentioned or described in the First Schedule hereto with the payment to the Mortgagees of the principal money, liabilities, interest and other money hereby covenanted to be paid by the Borrower;

(2) IN favour of a purchaser, the principal money hereby secured shall be deemed to have become due on the redemption date (but without prejudice to any equitable right to redeem thereafter), and the statutory power of sale as hereby extended shall be exercisable from and after the redemption date.

Covenant to insure.

3. THE Borrower hereby covenants with the Mortgagees that the Borrower will at all times during the continuance of this security keep the buildings on the mortgaged property insured in the joint names of the Borrower and the Mortgagees with any insurers to be approved by the Mortgagees against loss or damage by fire, and such other risks and contingencies (if any) as the Mortgagees may from time to time require, in not less than three-fourths of their full value for the time being, and will duly pay all premiums and other money payable for this purpose and produce the receipts therefor to the Mortgagees within seven days of their becoming payable, failing which the Mortgagees may, at the expense of the Borrower, effect or renew any such insurance as aforesaid as the Mortgagees shall think fit, and any sum paid by the Mortgagees for this purpose shall be repayable by the Borrower to the Mortgagees on the redemption date, with interest from the date of payment by the Mortgagees at the rate hereinbefore provided.

Statutory powers.

4. THE restrictions imposed by section one hundred and three of the Law of Property Act, 1925, shall not apply to this security, and the Mortgagees shall be at liberty at any time after they shall have given to the Borrower, or left for him at his last known

place of abode in the United Kingdom, at least one month's notice in writing of their intention so to do, to exercise and put in force all or any of the powers (as hereby extended) and remedies by that Act conferred on mortgagees.

Leasing, &c., powers.

5. THE statutory powers of leasing, agreeing to lease, and accepting surrenders of leases, shall not be exercisable by the Borrower (except to the extent of granting a tenancy from year to year in possession) without the written consent of the Mortgagees, but it shall not be necessary to express such consent in any lease, agreement or surrender.

Saving of other securities.

6. NOTHING herein contained shall operate so as to merge or otherwise prejudice or affect any bill, note, guarantee, mortgage, or other security which the Mortgagees may for the time being have for any money intended to be hereby secured, or any right or remedy of the Mortgagees thereunder.

Consolidation.

7. THE restriction on the right of consolidating mortgage securities contained in section ninety-three of the Law of Property Act, 1925, shall not apply to this security.

Limit of amount secured.

8. THE total sum secured and recoverable hereunder shall not exceed a principal sum of £—— (in addition to any commission, interest and costs and any money advanced for the purposes mentioned in subsection (3) of section eighty-eight of the Stamp Act, 1891): PROVIDED that—

(i) The limit imposed by the foregoing declaration and capable of being recovered shall not in any way prejudice or affect any right of the Mortgagees independently of this deed to recover the total sum due from the Borrower on any such account or in any such manner as hereinbefore mentioned or any excess of such total sum over and above the limit aforesaid;

(ii) If the total liability of the Borrower exceeds the said limit, the Mortgagees may, if they think fit, conclusively determine what part of the said total liability, not exceeding the limit aforesaid, shall be deemed to be secured by this deed, and what part thereof shall be deemed to be not so secured.

Power to delegate.

9. ALL the powers (except the power of sale) hereby or by statute conferred on the Mortgagees may be delegated in writing by the Mortgagees to any receiver appointed under the statutory power, save that all leases shall be made in the name of the estate owner, as provided by statute.

Power of attorney.

10. If and so far (if at all) as the provisions of section eighty-nine of the Law of Property Act, 1925, shall not apply to this Charge by reason of any exception made in sub-section (6) of that section, the Borrower hereby irrevocably appoints the Mortgagees and all persons deriving title under them and their substitutes, jointly and severally, to be the attorneys and attorney of the Borrower in his name and in the name of the estate owner for the time being to do all or any of the following things—

(i) On any exercise of the statutory power of sale, to make such assignments to a purchaser thereunder of the head term or leasehold reversion in the property with the same consequences as if the said section were applicable ;

(ii) After an order for foreclosure is made, to make such assignments of the head term or leasehold reversion aforesaid as may be required to vest the same in the Mortgagees or persons deriving title under them as if that order had applied thereto, and with the same consequences as if sub-section (2) of the said section were applicable ;

(iii) At any time after the power of sale has arisen, to arrange with the lessor and any other necessary parties for the legal apportionment of the rent reserved by any lease mentioned in the First Schedule hereto, to the intent that the said section shall apply to the security hereby made.

Addition to scheduled securities.

11. The money hereby secured is in addition to the money secured by the mortgages and securities (if any) mentioned in the Second Schedule hereto.

Joint and several covenants.

12. If two or more persons constitute the Borrower, all covenants herein contained or implied on the part of "the Borrower" shall be deemed to be joint and several covenants on the part of such persons.

In witness, &c.

The First Schedule.

*As to Property at*_____

*in the County of*_____

The property comprised in a { Conveyance / Lease / Assignment } dated the —— day of —— 19—, and made between

_____

THE SECOND SCHEDULE.

Previous securities made in favour of the Mortgagees.

Date of Charge or Mortgage.	Parties.	Amount secured or covered by Stamp.

No. III.

MORTGAGE *to* TRUSTEES *for* UNINCORPORATED BANKING COMPANY *to secure* BALANCE *of* CURRENT *or other* ACCOUNT. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D. and E. F., of, &c. (hereinafter called the Mortgagees), the trustees of the —— Banking Company,(*m*) of, &c. (hereinafter called the Company), of the other part: WHEREAS:—

Seisin of borrower.

(1) (*Recite seisin or the borrower's title*):

Agreement to give accommodation.

(2) (*Recite agreement as in Prec. I, substituting* "the Company" *for the* "Mortgagees"):

NOW, &c. (*first five clauses as in Prec. I*):—

Power of sale and other powers may be exercised by any persons in whom the charge may become vested as Trustees of the Company.

6. (1) If at any time during the continuance of this security the charge hereby made shall be transferred to any persons as trustees of the Company, for the purposes of this security, the transferees or other persons in whom this charge shall for the time being be vested shall have and may exercise the statutory power of sale and all other powers vested in the Mortgagees as fully and effectually as if the transferees had been named herein instead of the Mortgagees.

(2) A statement in any such transfer that the transferees are the trustees for the time being of the Company shall be conclusive evidence of the fact so stated.

Acknowledgment by Trustees, or

7. AN acknowledgment by the Mortgagees from time to time hereunder or by any two persons acting as Directors of the

Appropriation by bank of sums paid by borrower.

(*m*) Where the borrower pays sums to the credit of his account with the bank, the bank should appropriate them to liabilities in order of priority: *Clayton's Case* (1816), 1 Mer. at p. 605; and see *Deeley* v. *Lloyds Bank* [1912], A. C. 756. If the deeds are not handed over, a land charge should be registered.

Company, that the money hereby secured has been fully satisfied shall be conclusive evidence that the same has been satisfied accordingly.

by two directors, to be conclusive evidence that money is satisfied.

8. THIS Charge shall be a continuing security to the Company for the money hereby secured, of whatever shareholders or partners the Company may from time to time consist, and under whatever style or firm the banking business now carried on by the Company may for the time being be carried on, and the expression " the Company " shall be construed accordingly.

Security to extend to future shareholders of Company.

(*Add other special clauses as required. Clauses* 6 *and* 7 *are not applicable to registered land.*)

IN WITNESS, &c.

No. IV.

MORTGAGE (*n*) *to a* BANKING COMPANY *of* FREEHOLDS, ENFRANCHISED LAND, *and* LEASEHOLDS *comprised in the* DOCUMENTS *contained in* SCHEDULE *to secure* BALANCE *of* CURRENT *or other* ACCOUNT.(*o*) (*Legal Estate.*)

THIS LEGAL CHARGE made, &c. (*Parties and definitions as in Prec. I of this Group*), WITNESSETH as follows :—

1. IN consideration of accommodation given and agreed to be given to the Borrower by the Mortgagees, the Borrower hereby covenants with the Mortgagees (*Covenant to pay balance on account current, as in clause* 1 *of Prec. I of this Group*).

Covenant by borrower to pay money owing on account current.

4 to 6. (*As in clauses* 4—6 *of Prec. I of this Group. The variations for enfranchised land and leaseholds are given in Form No.* 10, *p.* 74, *supra. In each case the parcels will be by reference to the property comprised in the documents mentioned in the Schedule.*)

(*n*) This instrument will be a security for such an amount as the stamp at 2*s.* 6*d.* per cent. will cover.

(*o*) It may often be expedient for the company to require that a short mortgage by deed of the property comprised in the deposited documents should be executed by the borrower in preference to a mere memorandum by way of equitable mortgage, so that the bankers may at once obtain all the proper remedies, including a power to sell in case of default.

Advantage of mortgage by deed over memorandum.

When the advances are large, the completeness and efficiency of the security ought not to be sacrificed to the consideration that the mortgage deed will become a document of title.

The reconveyance can be effected by an endorsed receipt under L. P. Act, 1925, s. 115. If the security consists of enfranchised land affected by manorial incidents, the mortgage must be produced to the steward for endorsement within six months.

Reconveyance.

Enfranchised land.

7, 8 and 9. (*Add Forms Nos.* 11, 11A, 18 (*with variations*), *pp.* 75, 76, 81, *and other special forms as required.*)

IN WITNESS, &c.

THE SCHEDULE.

Date of Document.	Parties.	Nature of Document.	Property Affected.

No. V.

MORTGAGE *of* REGISTERED LAND *to a* BANKING COMPANY.

H. M. LAND REGISTRY.

Land Registration Act, 1925.

District——

Title No.——

Property——

(*Date*) IN consideration of banking facilities given to me by —— Bank Limited, whose registered office is at, &c. (hereinafter called the Bank):

I, ——, of —— (hereinafter called the Borrower), hereby, As Beneficial Owner, charge by way of legal mortgage the land comprised in the title above referred to with the payment to the Bank on demand of all money and liabilities which now are, or at any time hereafter may become due, owing or incurred from or by the Borrower to the Bank or for which the Borrower may be or become liable to the Bank on any current or other account or in any manner whatever, and whether alone or jointly with any other person, and in whatever name, style or firm, together with interest to date of repayment, commission, banking charges, law and other costs, charges and expenses (such interest being computed both before and after any such demand, according to the usual mode of the Bank with current accounts, and that notwithstanding any account intended to be hereby secured, may from any cause cease to be carried on as an ordinary banking account, and so that interest shall be payable at the rate so provided as well after as before any judgment obtained hereunder) AND IT IS HEREBY DECLARED as follows:—

1. IN favour of a purchaser the principal money hereby secured shall be deemed to have become due on the day on which demand

for payment thereof is made by the Bank, and the statutory power of sale, as hereby extended, shall be exercisable from and after that date, which date (without prejudice to the equitable right to redeem) shall be the redemption date. Power of sale.

2. THE restrictions upon the statutory power of sale imposed by section one hundred and three of the Law of Property Act, 1925, shall not apply to this security, and the Bank shall be at liberty at any time after they shall have given to the Borrower or left for him at his last known place of abode in the United Kingdom at least one month's notice in writing of their intention so to do, to put in force all and every or any of the powers (as hereby extended) and remedies by the said Act conferred on mortgagees. Statutory powers.

3. THE statutory powers of leasing, agreeing to lease and accepting surrenders of leases shall not be exercisable by the Borrower (except to the extent of granting a tenancy from year to year in possession) without the written consent of the Bank, but it shall not be necessary to express such consent in any lease or surrender. Leasing powers, &c.

4. NOTHING herein contained shall operate so as to merge or otherwise prejudice or affect any bill, note, guarantee, mortgage or other security which the Bank may for the time being have for any money intended to be hereby secured or any right or remedy of the Bank hereunder. Saving of other securities.

5. THE total sum secured and recoverable hereunder shall not exceed £—— (in addition to any commission, interest and costs and any money advanced for the purposes mentioned in sub-section (3) of section eighty-eight of the Stamp Act, 1891): PROVIDED that— Limit secured.

(i) the limit imposed by the foregoing declaration, which is capable of being recovered, shall not in any way prejudice or affect any right of the Bank independently of this Charge to recover the total sum due from the Borrower on any such account or in any such manner as hereinbefore mentioned or any excess of such total sum over the limit aforesaid.

(ii) if the total liability of the Borrower exceeds the said limit the Bank may, if they think fit, conclusively determine what part of the said total liability not exceeding the limit aforesaid shall be deemed to be secured by this Charge and what part thereof shall be deemed not to be so secured.

Continuing security.

6. THIS Charge shall be a continuing security to the Bank notwithstanding any settlement of account or other matter or thing whatsoever.

Additional advance.

7. THE money hereby secured is in addition to the money secured to the Bank by any other mortgages or securities.

Covenant to insure.

8. THE Borrower hereby covenants with the Bank that the Borrower will at all times during the continuance of this security keep the buildings on the mortgaged property insured in the joint names of the Borrower and the Bank with any insurers to be approved by the Bank against loss or damage by fire and such other risks and contingencies (if any) as the Bank may from time to time require, in not less than three-fourths of their full value for the time being, and will duly pay all premiums and other money payable for this purpose and produce the receipts therefor to the Bank within seven days of their becoming payable, failing which the Bank may, at the expense of the Borrower, effect or renew any such insurance as aforesaid as the Bank shall think fit, and any sum paid by the Bank for this purpose shall be repayable by the Borrower to the Bank on demand with interest from the date of payment by the Bank, at the rate so provided as aforesaid.

Definitions.

9. IN this Charge the expressions "the Borrower" and "the Bank" include the persons respectively deriving title under them.

SIGNED, SEALED, &c.

No. VI.

MORTGAGE *of* FREEHOLDS *to a* BUILDING SOCIETY.(*p*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), a Member of the —— Building Society, of the 1st part, C. D., of, &c. (hereinafter called the

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B. S. Act, 1874, provides for incorporation.

(*p*) The Building Societies Act, 1836, for the regulation of Benefit Building Societies, was repealed by the Building Societies Act, 1874, which Act has been amended by subsequent Acts, viz. (1875) 38 & 39 Vict. c. 9; (1877) 40 & 41 Vict. c. 63; (1884) 47 & 48 Vict. c. 41; and (1894) 57 & 58 Vict. c. 47; but the repeal does not affect any subsisting society certified under the repealed Act, until such society obtains a certificate of incorporation under the new Act. Any society whose rules have been certified under the Act of 1836 may obtain a certificate of incorporation: Act of 1875, s. 2. Every subsisting or future society, upon receiving a certificate of incorporation, becomes a body

Surety), of the 2nd part, and the said Building Society, duly incorporated under the Building Societies Act, 1874, whose place of meeting is at —— (hereinafter called the Society), of the 3rd part: WHEREAS:—

(1) (*Form No.* 1, *p.* 68, *seisin of Borrower*):

(2) The Borrower is the owner of —— subscribing shares in the Society, numbered respectively ——, and he is, by the rules

Borrower entitled to advance in respect of his shares.

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corporate by its registered name, see Act of 1874, s. 9; see also Wurtzburg, *passim*.

Investments.

Any society may from time to time, as the rules permit, invest any portion of its funds upon real or leasehold securities, or other specified securities, or in or upon any security in which trustees are for the time being authorised by law to invest, but may not advance money upon the security of any land which is subject to a prior mortgage, unless the prior mortgage is in favour of the society: Act of 1874, s. 25; Act of 1894, ss. 13, 17; see also *Sheffield, &c., Building Socy.* v. *Aizlewood* (1889), 44 Ch. D. 412; 59 L. J. Ch. 34. The restriction that money must not be advanced on second mortgage, unless the first mortgage is in favour of the society, is imposed by the Act of 1874, s. 13.

Enfranchised land.

As societies could formerly lend on the security of copyholds, it is conceived that there can be no objection to their lending on the security of enfranchised land affected by a compensation rentcharge. But mortgagees will generally insist on the rentcharge being redeemed: L. P. Act, 1922, s. 139 (3); L. P. Act, 1925, s. 191. If the land is affected by manorial incidents, the mortgage must be produced to the steward within six months for endorsement.

Infants.

An infant may be a member, but cannot execute a valid mortgage: *Nottingham, &c., Socy.* v. *Thurstan* [1903], A. C. 6; 72 L. J. Ch. 134. An infant cannot hold a legal estate: L. P. Act, 1925, s. 1.

Stamp duty.

Section 41 exempts from stamp duty the rules of the society and other documents therein mentioned, but provides that the exemption shall not extend to any mortgage. The result is that unincorporated societies still enjoy the benefit of exemption from stamp duty on mortgages not exceeding £500, and further charges where the amount does not exceed £500; but incorporated societies are not entitled to exemption, see Alpe, 18th ed., pp. 301-2; Highmore, 4th ed., 249, 336-8.

Mortgages vested in trustees, before 1925.

If before 1925 a mortgage has been taken in the names of trustees for a society, *semble*, the mortgage term will under L. P. Act, 1925, 1st Sch., Pt. II, para. 6 (a), and Pts. VII and VIII, vest in the trustees, and not in the society.

Rules.

The rules of the particular society must be considered in preparing mortgages of this kind. A mortgagor to a building society is bound by the rules as altered at the date of the contract: *Bradbury* v. *Wild* [1893], 1 Ch. 377; 62 L. J. Ch. 503. See also as to alterations in rules: *Botten* v. *City, &c., Socy.* [1895], 2 Ch. 441; 64 L. J. Ch. 609. For the statutory form of receipt which operates as a reconveyance, see L. P. Act, 1925, s. 115, 3rd Sch., Form No. 2, which varies the form of receipt mentioned in the schedule to the Act of 1874, and see last paragraph but one of note on p. 66.

Power for Society to acquire a title by possession.

Where the money is not repayable for ten years, and the society takes possession before the expiration of that period, the Limitation Acts begin to run against the mortgagor from the date of taking possession, not from the expiration of the ten years: *Re Metropolis, &c., Bldg. Socy.* [1911], 1 Ch. 698; 80 L. J. Ch. 387.

Registered land.

If the deeds are not handed over, a land charge must be registered.

As to registered land, see L. R. Act, 1925, s. 25 (2) (3).

of the Society, entitled to an advance of £—— in respect of those shares, repayable with interest calculated in accordance with the Tables now in use by the Society (no income tax being in the first instance deducted) over a period of —— years, and such interest (independently of the arrangements hereinafter mentioned in regard to income tax) has been calculated and agreed to amount to £——, making with such sum of £—— the aggregate sum of £——, and the repayment of such advance with interest thereon as aforesaid is to be secured in manner hereinafter appearing :

Present and future advances.

(3) It has been agreed that upon the execution of this Mortgage the Society shall pay to the Borrower the sum of £—— (part of the said intended advance of £——) and shall pay the residue thereof to the Borrower as and when and by such instalments as the Society shall think fit.

NOW, in consideration of the sum of £—— (part of the said aggregate sum of £——) now paid by the Society out of their funds to the Borrower (the receipt whereof the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to make payments, &c.

1. THE Borrower and the Surety hereby jointly and severally covenant with the Society :

(1) To pay to the Society the said sum of £—— by instalments at the times and in manner following, that is to say, £—— (without any deduction as aforesaid) on the first ——day in the month of —— next and £—— (without any deduction as aforesaid) on the first ——day in every succeeding month thence next ensuing until the whole sum of £—— shall be fully paid and satisfied :

(2) To pay all such other subscriptions, fines and payments (if any) as according to the rules of the Society for the time being in force or this deed (whichever may be the greater) may become payable in respect of the said —— shares or the said advance of £—— or any part thereof :

(3) PROVIDED that where part only of the intended advance has been made by the Society nothing herein contained shall render the Borrower liable to make payments in the aggregate in excess of those attributable to advances actually made, but in the meantime the Borrower shall make monthly and other payments of the same amounts as if the entire advance had been made until the liability of the Borrower is discharged :

(4) NOTHING herein contained shall prevent the Society from giving time for payments to be made or making other arrange-

ments as to the mode and time for payment in manner hereinafter mentioned.

2. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage, Legal charge.

ALL AND SINGULAR the property, short particulars whereof are contained in the Schedule hereto :

WITH the payment to the Society of the instalments, subscriptions, fines and other money (whether in the nature of principal interest or otherwise) hereby covenanted to be paid, but subject to the rights of the Borrower under section forty-two of the Building Societies Act, 1874, as varied by section one hundred and fifteen of the Law of Property Act, 1925 :

(2) FOR the purposes of this Charge the legal right of redemption shall cease on the first ——day in the month of ——next and in favour of a purchaser the statutory power of sale (as hereby extended) shall arise from and after that date:

(3) IF this Charge is transferred under the power for that purpose hereinafter contained, the foregoing Charge shall extend and apply to the principal money, interest and all other money which may, by virtue of the transfer, become owing to the transferee or the persons deriving title under him, and in that case the legal right of redemption hereunder shall cease at the end of six months from the date of the transfer.

3. THE Borrower and the Surety hereby jointly and severally covenant with the Society as follows :— Covenants by the Borrower and Surety

(1) THAT the Borrower shall and will from time to time and at all times hereafter well and truly perform, observe and be bound by the present and any future rules and regulations of the Society in respect of the advance above mentioned and of the said shares, except so far as such rules or regulations are expressly modified by this deed :

(2) THAT the Borrower shall sufficiently repair the property hereby charged when and as often as in the opinion of the Society need shall require in a good and workmanlike manner to the satisfaction of the Directors or Board of Management of the Society:

(3) THAT the Borrower will either insure or permit the Society, at the expense of the Borrower, to insure the property—

(i) against loss or damage by fire ;

(ii) against loss or damage by aircraft or bombardment and other risks of war or the King's enemies, riot, civil commotion and such other contingent risks as the Society may from time to time think expedient ;

and in any of such cases for such amounts, in such names, and with such insurers as the Society may from time to time select:

(4) THAT the Borrower will repay every sum from time to time paid by the Society for keeping on foot every such insurance within seven days after the date on which it is paid, with interest, fines and such other payments in respect thereof as may at any time be provided by the rules of the Society and will permit all insurance policies and the receipts or other sufficient evidence of payment of every sum so paid as aforesaid to remain in the custody of the Society or will, when required, deliver or produce the same or cause the same to be delivered or produced to such persons as the Society may direct:

(5) THAT the statutory right to effect and keep on foot fire insurances shall extend and apply to all the insurances aforesaid, but free from any restrictions as to the amount of any insurance and so that all insurance money actually received shall (if so required by the Society) be applied in rebuilding or reinstating the property in accordance with the requirements of the Surveyor of the Society:

(6) THAT the statutory power of leasing, or agreeing to lease, and accepting surrenders of leases, shall not be exercisable by the Borrower without the consent in writing of the Society, but it shall not be necessary to express such consent in any lease, agreement or surrender:

(7) THAT the statutory power of sale (as hereby extended) shall be exercisable free from the restrictions imposed by section one hundred and three of the Law of Property Act, 1925:

(8) THAT the Society may from time to time, in writing at their absolute discretion, authorise the Borrower or the Surety to repay money by other instalments than those hereinbefore directed to be made or may remit any instalment or give further time for the payment of any money hereby secured or generally make such other arrangements as to the mode and time for payment of any money (whether in the nature of principal interest or otherwise) as they may think fit:

PROVIDED that no such arrangement shall affect the power of sale and other powers hereby or by statute conferred on the Society, or render the Society liable in damages or otherwise for the exercise of any such power in any case where, if the arrangement had not been made, no such liability would have arisen.

4. PROVIDED as follows :— Powers of Society, when exercisable.

(1) If default be made by the Borrower or by the Surety in payment of any one or more of the said instalments and other payments hereby covenanted to be made at the times and in manner aforesaid or in the observance and performance of any of the covenants or obligations herein expressed or implied or

(2) If (but subject in this case to any leave of the court which may be required) the Borrower shall become bankrupt, have a receiving order made against the Borrower, or the Borrower shall enter into any statutory or other composition or arrangement with the creditors of the Borrower generally :

then, and in any of such cases, the whole of the money payable or to become payable hereunder shall be deemed to be forthwith due and owing, and the Society may, without any previous notice to or concurrence on the part of the Borrower—

(i) Appoint a receiver under the statutory power and eject from the property the Borrower, the tenants and workmen and all other persons then in possession or occupation thereof ;

(ii) Effect and carry out upon the property any such repairs, amendments, alterations or additions as the Society shall consider necessary or desirable for the improvement of the property or of the security hereby created ;

(iii) In exercise of the statutory power, sell all or any part of the property, with full power in the meantime and until the property shall be sold as aforesaid, to demise and lease (in extension of the statutory power) the same or any part thereof, for such periods, at such rents, and upon such terms in all respects as the Society shall think fit.

5. (1) ALL money paid by the Society in repairing, amending, altering, improving or insuring the property or in making any payments for outgoings in relation to the property, or for the protection or improvement of the security hereby created, shall carry interest at the rate of £— per cent. per annum and shall be repayable by the Borrower on demand, and in the meantime shall be a charge on the property : As to money paid by Society and as to income tax.

(2) IN satisfaction of the right (if any) of the Borrower to deduct income tax from payments attributable to interest, the Society shall in accordance with their established practice

furnish to the Commissioners (and if so required to the Borrower) sufficient information up to the 31st December in each year to show what payments made by or on behalf of the Borrower during the year are attributable to interest, and to enable the Borrower to obtain from the Commissioners a proper allowance (whether by repayment or otherwise) on that footing in respect of income tax.

Application of money received

6. The Society shall, out of the money to arise or to be received by any collection of rents, profits or other income, and from any such sales or insurances as aforesaid—

(1) In the first place retain or pay and satisfy all costs, damages, expenses and disbursements incurred by or on behalf of the Society in or on account of the collection of rents, profits and income (including the remuneration of the receiver), or in respect of or consequent upon any such sales or insurances of the property from loss or damage from any of the risks aforesaid as the Society may from time to time direct, or in effecting any repairs, amendments, alterations or improvements to the property under the power for that purpose hereinbefore contained or in payment of any rates or taxes or other outgoings in respect of the property, or in obtaining possession or enforcing the performance of any contract for the sale of the same or any part thereof or otherwise incidental to the execution of the powers herein contained or by law implied or to the recovery of the money due on this security:

(2) In the next place the Society shall retain or pay and satisfy the whole of the money remaining due or unpaid in respect of the advance hereinbefore mentioned or otherwise under any covenant for payment hereinbefore contained, and all other money then due or payable by the Borrower by virtue of the said rules or this deed:

(3) The Society shall (subject as hereinafter provided in regard to making provision for payment of future instalments or payments) pay the surplus (if any) of the said money to the Borrower or to such other person as the Borrower shall by writing appoint, to receive the same, but without prejudice to the rights of the Society under paragraph (v) of sub-section (8) of section one hundred and nine of the Law of Property Act, 1925.

Deficit to be made good by Borrower.

7. If the rents, profits or income received by the Society, and the proceeds of any sale, shall not be sufficient to answer the trusts or purposes aforesaid, the Borrower or the Surety shall forthwith pay to the Society the sum necessary to make up

the deficiency and such sum shall carry interest at the rate of £— per cent. per annum.

As to receivers.

8. (1) ALL the powers (except the power of sale) hereby or by statute conferred on the Society may be delegated, in writing by the Society, to any receiver appointed under the statutory power, save that all leases shall be granted in the name of the estate owner as required by statute :

(2) THE receiver shall have full power to employ and pay collectors and other agents for carrying out the work of and incidental to the receivership, but the remuneration of such agents shall be paid out of the commission to which the receiver is entitled :

(3) IN giving effect to the provisions of sub-section (8) of section one hundred and nine of the Law of Property Act, 1925, the receiver shall have power (instead of paying the residue of the money to the Borrower) to place any such residue on deposit or otherwise at a bank in the name of the receiver, with a view to discharging thereout instalments and other money which may thereafter become due to the Society, and money so set aside shall not be treated as carrying interest, save to the extent of the interest (if any) allowed in respect thereof by the bank, nor, in taking accounts, shall money not actually paid by the receiver to the Society be treated as having been received by them, but for the purposes of that sub-section, "principal money" shall be deemed to include all money hereby secured, whether in the nature of instalments, fines, subscriptions or otherwise.

Power for Society to transfer.(*q*)

9. (1) THE Society shall have power after the power of sale has become exercisable and shall also have power at any time with the consent of the Borrower, to transfer the benefit of this Charge to any person, subject to cesser, on payment of the principal money then due, with interest thereon at the rate hereinafter mentioned :

(2) IN any such case the whole of the money then remaining owing to the Society shall be treated as principal money, and shall become payable to the transferee at the end of six months, with interest thereon at the rate of £— per cent. per annum, from the date of such transfer :

Transfer of building society mortgage.

(*q*) In view of the decision in *Re Rumney and Smith* [1897], 2 Ch. 351 ; 66 L. J. Ch. 641, a clause to this effect should be inserted. This is also expedient to enable a receipt endorsed under L. P. Act, 1925, s. 115, in a proper case, to operate as a transfer. If the society have no power to execute an effective transfer the receipt could only operate as a discharge, see *Sun &c. Soc.* v. *Western, &c. Soc.* [1921], 2 Ch. 438 ; 91 L. J. Ch. 74.

(3) THE transferee shall have all the powers conferred upon mortgagees by the Law of Property Act, 1925, in like manner as if—

(i) such transfer had been an original charge by way of legal mortgage for the principal sum then owing and the interest to become due thereon :

(ii) the Borrower had covenanted with the transferee to pay the principal money with interest thereon at the rate aforesaid, at the end of six months from the date of the transfer, And also so long thereafter as any principal money remained owing to pay to the transferee interest thereon at the rate aforesaid by equal half-yearly payments :

(4) AFTER the execution of any such transfer the provisions herein contained having special reference to the Society or their rules shall cease to apply to this security :

(5) EVERY statement of fact made in good faith contained in such transfer shall as against the Borrower be deemed to be conclusive and binding :

(6) ANY receipt endorsed hereon pursuant to section one hundred and fifteen of the Law of Property Act, 1925, may, in accordance with that section, operate as a transfer for the purposes of this clause.

Attornment clause.

10. (1) THE Borrower hereby attorns tenant to the Society of such parts of the property as may at any time be in the occupation of the Borrower at the yearly rent of sixpence, if demanded :

(2) PROVIDED that the Society may at any time after the said first ——day in —— next, by giving to the Borrower or leaving upon the property at least three days' notice in writing of the intention of the Society so to do, determine the tenancy hereby created and enter upon the property, but so that the said tenancy shall not render the Society liable to account to any person as mortgagees in possession :

(3) THE Borrower hereby irrevocably appoints the Society or their substitutes jointly and severally to be the attorney or attorneys of the Borrower in his name, or otherwise to enter an appearance on his behalf in any proceedings for ejectment and consent to any judgment or order (whether or not made in a summary way) giving to the Society the possession of the property or any part thereof.

Receipts, &c.

11. (1) EVERY receipt in writing given by or on behalf of the Society or any receiver hereunder purporting to act under

or in execution of the powers hereby or by statute conferred or the trusts herein contained to any tenant, purchaser, or other person, for any money paid to the Society or their agent, or to any such receiver, shall be a sufficient discharge to such tenant, purchaser, or other person, and exonerate him from all liability in respect to the application thereof:

(2) No tenant or purchaser of the property, or any part thereof, or other person having dealings with the Society, or any such receiver, when acting professedly under the said powers or trusts, shall be bound or be competent to enquire whether there has been any such default as above mentioned, or as to the necessity or propriety of any sale, lease, or other act or document done or executed by the Society, or the receiver, professedly under the said powers or trusts, nor be obliged to see to the application of any money so paid, nor be in any way affected by any misapplication thereof:

(3) No tenant, purchaser, transferee, or other person acting in good faith for money or money's worth shall be concerned with the rules of the Society for the time being in force, or with any separate arrangement which may have been made by the Society with the Borrower, but shall be entitled to act on the faith of any statement made by the solicitor, secretary, or other officer of the Society, or by or on behalf of any receiver hereunder.

Continuing security.

12. This deed shall be a security, not only for the money hereby covenanted to be paid, but for any other money which may be or become due to the Society from the Borrower on any account whatsoever, and section ninety-three of the Law of Property Act, 1925, shall not apply to this Charge.

Liability of Surety.

13. Without prejudice to any right of the Surety against the Borrower as principal debtor, the Surety shall, under any covenant by the Surety herein contained, be deemed a principal debtor and not merely a surety, and accordingly shall not be discharged, nor shall the liability of the Surety be affected—

(i) by any giving of time for payment of any money; or

(ii) by any agreement not to call in money before a specified time; or

(iii) by any other arrangement between the Society or the Borrower; or

(iv) by any omission on the part of the Society to enforce any covenant or obligation enforceable against the Borrower; or

(v) by any other act, thing, omission, or means whereby the liability of the Surety would not have been discharged if the Surety had been a principal debtor.

14. (*Add covenant not to register, Form No.* 17, *p.* 80, *substituting* "Society" *for* "Mortgagees.")

Express powers are in addition to other powers and remedies.

15. THE powers hereby conferred on the Society are in addition to all other powers and remedies vested in the Society under the rules and regulations thereof, or by statute, for recovering or enforcing payment of the money intended to be hereby secured.

Interpretation.

16. IN this deed the expression "Borrower" includes, where the context admits, the persons deriving title under him, and the expression "Society" includes any Building Society acquiring the business of the Society and entitled to carry on that business in place of the Society, but does not in other respects include a transferee from the Society.

IN WITNESS, &c.(*r*) [*Add Schedule. If the land is affected by manorial incidents and rights reserved to the lord this must be mentioned and the deed must be produced to the steward within six months.*]

No. VII.

MORTGAGE *of* LEASEHOLDS *to a* BUILDING SOCIETY.(*s*) (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c. (*Parties as in last Precedent*): WHEREAS:—

Title to lease.

(1) The Borrower is solely entitled to the leasehold property, short particulars whereof are contained in the Schedule hereto,

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(*r*) In some cases a clause on the following lines is added:—

Sum to be deemed due on sale.

"IF the premises or any part thereof shall be sold by the Society under the said power, there shall be deemed to be due and owing at the time of such sale from the Borrower to the Society, in addition to the arrears of subscriptions and other money then actually due and owing, such a sum of money as under Rule No. — of the present registered rules of the Society, or under any new rule to be substituted for the same and which may be then in force, would be payable by the Borrower for redemption if he had elected to redeem in the half-year in which such sale shall be made, and the same shall be deducted and retained by the Society out of the net proceeds of sale accordingly."

Rent.

(*s*) See note to last Precedent. A covenant to pay the rent, &c., is implied under L. P. Act, 1925, s. 76, para. (D), 2nd Sch., Pt. IV.

for the residue of the term of —— years created by the Lease, the date whereof and parties whereto are also stated in that Schedule, subject to the yearly rent and to the covenants on the part of the lessee and conditions in and by such Lease reserved and contained :

(2) and (3) (*As in recitals* (2) *and* (3) *of last Precedent.*)

NOW, in consideration of the sum of £—— (part of the said sum of £—— as aforesaid), now paid to the Borrower by the Society out of the funds thereof (the receipt whereof the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to make payments, &c.

1. (*As in last Precedent.*)

Legal charge.

2. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage :

ALL AND SINGULAR the leasehold property, short particulars whereof are contained in the Schedule hereto, And all other (if any) the property comprised in or demised by the Lease therein mentioned :

WITH the payment (*continue as in last Precedent*).

(2) and (3) (*As in last Precedent.*)

3. (*Add Form No.* 11, *p.* 75, *substituting* "Society" *for* "Mortgagees.")

4 to 17. (*As in clauses* 3 *to* 16 *of last Precedent.*)

IN WITNESS, &c.

THE SCHEDULE.

Part I.

Particulars of Property demised.

ALL that, &c.

Part II.

Date of Lease.	Parties.	Term.	Yearly Rent.

No. VIII.

MORTGAGE *of* FREEHOLDS, ENFRANCHISED LAND *and* LEASEHOLDS *to the* TRUSTEES *of a* FRIENDLY SOCIETY,(*t*) *providing for the repayment of the principal money by instalments according to either the* INSTALMENT METHOD *or the* ANNUITY METHOD. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, C. T., of, &c., R. T., of, &c., and F. T., of, &c. (hereinafter called the Mortgagees), the duly appointed Trustees of the —— Society (hereinafter called the Society), having its registered office at —— and registered under the Friendly Societies Act, 1896, of the other part: WHEREAS:—

Seisin of freeholds.

(1) The Borrower is seised of the freehold property described in the first part of the First Schedule hereto for an estate in fee simple in possession free from incumbrances:

Title to enfranchised land.

(2) Immediately before the commencement of the Law of Property Act, 1922, the Borrower was entitled to the property mentioned in the second part of the First Schedule hereto for an estate of inheritance according to the custom of the Manor of ——, he having been admitted tenant thereto on the, &c.:

Statutory enfranchisement.

(3) By virtue of the said Act (as amended) the said property became vested in the Borrower in fee simple subject to the mineral and sporting rights of the lord of the said manor and to the manorial incidents saved by that Act:

Compensation agreement.

(4) By a Compensation Agreement dated, &c., and made between X. Y., the lord of the said manor of the one part, and the Borrower of the other part, the said mineral and sporting rights with the manorial incidents aforesaid were acquired or extinguished in consideration of the reservation of a terminable and variable yearly rentcharge of £—— (representing a gross sum of £—— compensation) with interest at the rate of £5 10s.

Powers of a Friendly Society to invest their funds on mortgage.

(*t*) As to dealings with the land of a friendly society: L. P. Act, 1925, s. 7 (3). Under s. 44 of the Friendly Societies Act, 1896, as amended by s. 4 of the F. S. Act, 1908, a Friendly Society may invest their funds in any investment for the time being authorised by law for the investment of trust money. Hence, the borrower is not concerned in the case of first mortgages of freeholds, enfranchised land and leaseholds (if within T. Act, 1925, s. 1) to see whether the rules of the society authorise the investment.

The Act of 1896 consolidates the previous Acts and repeals them except to the extent mentioned in the Third Schedule thereto.

As to registered land, see L. R. Act, 1925, s. 25.

per cent. per annum on so much of the said gross sum as should not for the time being be discharged by means of the said rentcharge :

Receipt for fines, &c.

(5) As appears from a Receipt of even date with and endorsed on the said Compensation Agreement all fines and other customary payments have been duly discharged in respect of the said property :

Lease.

(6) By a Lease dated, &c. (*recite lease to the Borrower of the property in the third part of the First Schedule*).

Investment rules.

[(7) Under the rules (*u*) of the Society the Mortgagees are authorised as such trustees as aforesaid to invest the funds of the Society or any part thereof (subject to such consent or resolution as is hereinafter mentioned) to any amount upon the security of land of any tenure in England or Wales (subject in the case of leasehold property to the same being held for an unexpired term of at least —— years), and so that funds so invested or any part thereof might remain upon the security of such property for a term certain not exceeding seven years and be made repayable by equal half-yearly instalments of principal money with interest thereon varying with the number of such instalments for the time being unpaid or by equal half-yearly instalments of principal money and interest combined :]

Agreement for loan with consent of committee of the Society or of a majority of its members.

(8) The Mortgagees with the consent (*v*) of the Committee of the Society [in pursuance of a resolution of a majority of the members present and entitled to vote at a general meeting of the Society held on the —— day of —— 19—] have agreed to advance to the Borrower the sum of £—— upon having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing :—

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower out of such funds as aforesaid (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants (*continue as in Forms Nos.* 4 *and* 6, *pp.* 73, 74).

Legal charge on freeholds, enfranchised land and leaseholds.

2. (*Form No.* 10, *p.* 74, *referring in the parcels in each case to the appropriate part of the First Schedule and making the Charge*

(*u*) Trustees have power under the T. Act, 1925, s. 10 (1), to lend money for a term certain of seven years ; see also ss. 1 (1) (*b*), 5 (1) (2), 6, 8, 10 (2).

(*v*) This consent or resolution is requisite under s. 44 of the F. S. Act, 1896.

subject to the compensation rentcharge in regard to the enfranchised land. If the manorial incidents have thus been discharged it is not necessary to produce the mortgage to the steward for endorsement but this must be done within six months if there has been no Compensation Agreement or notice to ascertain the compensation.)

Covenant to insure against fire.

3. THE Borrower hereby covenants, &c. (*continue as in Form No.* 18, *p.* 81).

Provision as to repayment of mortgage money by instalments. (*w*)

4. (1) PROVIDED that if the Borrower shall pay to the Mortgagees the said sum of £—— with interest thereon at the rate aforesaid by the instalments (of principal and interest combined) on the half-yearly days hereinbefore fixed for payment of interest and in the manner provided in the Second Schedule hereto or shall pay the same within thirty days next after the day so appointed for payment thereof, And if there shall not have been any breach of any obligation statutory or otherwise binding on the Borrower or of any of the covenants whether express or implied herein contained and on his part to be observed and performed (other than and besides the covenants for payment of principal money and interest hereby secured) then and in such case the Mortgagees shall accept payment of the said sum of £—— and the interest thereon by the instalments and in manner aforesaid and will not require payment of such principal money otherwise than by such instalments:

(2) NOTWITHSTANDING that (*continue as in Form No.* 24 (2), *p.* 88):

(3) PROVIDED ALSO that upon any sale under the statutory power a purchaser shall not either before or after conveyance be concerned to see or inquire whether any default has been made in payment of any such instalment or be affected by any notice that no such default has occurred or that the sale is otherwise unnecessary or improper.

Agreement for mortgage to continue for time certain. (*x*)

5. (1) THE Mortgagees hereby covenant, &c. (*continue as in Form No.* 31, *p.* 92, *adapting where necessary. Add special clauses, e.g., Forms Nos.* 11 *and* 11A *as required.*)

IN WITNESS, &c.

(*w*) This clause will apply whether the instalment method or the annuity method is adopted in the Second Schedule.

(*x*) This will bind the mortgagees without executing. The period should not exceed seven years: *Morgan* v. *Jeffreys* [1910], 1 Ch. 620; 79 L. J. Ch. 360, even though the instalments are to extend over a much longer period: T. Act, 1925, s. 10 (1).

THE FIRST SCHEDULE.

First Part.

Particulars of freehold property hereby mortgaged.

Second Part.

Particulars of enfranchised lands hereby mortgaged.

Third Part.

Particulars of leasehold land hereby mortgaged.

THE SECOND SCHEDULE.

Table (*y*) showing how instalments are to be paid.

Half-years.	Principal due.	Half-year's Interest.	Principal to be repaid in half-year.	Combined payments of principal and interest.

No. IX.

MORTGAGE *of* FREEHOLDS *to a* DISTRICT COUNCIL *under the* SMALL DWELLINGS ACQUISITION ACTS, 1899 to 1923, *as amended by the* HOUSING ACT, 1921.(*a*) (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Proprietor), of the one part, and Parties.

(*y*) This table may be used for either the instalment method or the annuity method.

(*a*) The Small Dwellings Acquisition Acts, 1899 to 1923, as defined in the Housing, &c., Act, 1923, s. 25 (6), now consist of— "S. D. Acquisition Acts," amendments affecting.

(1) The Act of 1899:

(2) Part III of the Housing, Town Planning, &c., Act, 1919, see ss. 49, 52 (4) and 4th Sched.:

(3) Part III of the Housing, &c., Act, 1923, see ss. 22 and 25 (6).

Under the Housing Act, 1921, s. 5, the rate of interest can be fixed by the Minister and the Schedule contains a consequential repeal.

Under the L. P. (Amend.) Act, 1924, 9th Sch., para. 5, and the L. P. Act, 1925, ss. 85 (4) and 86 (4), mortgages made under the Small Dwellings Acquisition Acts must be made either by a charge by way of legal mortgage or by demise or sub-demise. Mode of mortgaging.

In the case of mortgages made before 1926, the local authority lose any fee simple or head term, and take in place thereof either a long term or a sub-term: L. P. Act, 1925, 1st Sch., Pts. VII and VIII. Vesting provisions.

Thus having lost the fee simple or head term, and being unable in future to take mortgages passing the fee simple or the head term, it was essential that Realisation of charges.

the Urban District Council of ——, in the County of —— (hereinafter called the Council), of the other part: WHEREAS:—

Local authority.

(1) The Council are the local authority for the Urban District of —— for the purposes of the Small Dwellings Acquisition Acts, 1899 to 1923, as amended by the Housing Act, 1921 (hereinafter collectively referred to as "the Principal Acts"):

Seisin.

(2) The Proprietor is the proprietor, within the meaning of the Principal Acts, of the [house and (*b*)] land described in the First Part of the First Schedule hereto, the Proprietor being the owner thereof, for an estate in fee simple in possession free from incumbrances, having acquired the same by a Conveyance, bearing even date with but executed immediately before this Charge, and made between the parties mentioned in the Second Part of that Schedule.

Acquisition under the Acts.

(3) The said property was acquired by the Proprietor under the provisions of the Principal Acts, and the Council, under the authority thereof, have agreed to make an [aggregate] advance of £—— to the Proprietor for the purposes of such acquisition [and of enabling the Proprietor to construct a house on the said land or part thereof]:

NOW, pursuant to the Principal Acts, and in consideration of the sum of £—— [part of the said intended advance of £——], now paid by the Council to the Proprietor to enable the Proprietor to acquire the said property [and construct a house as aforesaid] (the receipt of which sum the Proprietor hereby acknowledges), [and of the agreement by the Council to make the further advances hereinafter contained] THIS DEED WITNESSETH as follows:—

---

the local authority should be given power, when realising, to convey the fee simple or the head term; these powers are given: *ib.*, ss. 88 and 89.

Power of attorney when required.

Though under s. 89 (6) the head term cannot be conveyed, if part only of the land comprised in a lease has been mortgaged, and the rent has not been legally apportioned with the consent of the lessor. In this case a power of attorney should be given.

Powers of sale.

It will no longer be possible to exclude the statutory powers conferred by ss. 88, 89 and 101, but these powers should be made exercisable in the same events only as the local authority would under the Act of 1899, as amended, have had power to "order a sale."

Bankruptcy of proprietor.

Under the L. P. Act, 1925, s. 110, a mortgagee whose power of sale arises merely by reason of the bankruptcy of the mortgagor, cannot exercise that power without the leave of the Court; this in effect, amends the Small Dwellings Acquisition Act, 1899, s. 3 (5).

Registered land.

As to registered land, see L. R. Act, 1925, s. 25; L. R. R., 1925, r. 80.

(*b*) The proprietor may be intending to construct a house: Act of 1923, s. 22.

1. THE Proprietor hereby covenants with the Council as follows :— Covenant to make statutory payments.(c)

(1) THAT the Proprietor will, in accordance with his statutory obligations, satisfy the repayment of the said advance, with interest thereon at the rate hereinafter mentioned (hereinafter called the stated rate), by paying to the Council an annuity of principal and interest combined for the term and by the instalments hereinafter mentioned :

[(2) PROVIDED that the Council shall from time to time complete the said advances as and when their surveyor shall be satisfied that the same can be properly made in accordance with the statutory requirements, but the said combined annuity shall be paid by the Proprietor in like manner and at the same times as if the said aggregate advance had been made at the date hereof : [Council to complete the advance.(d)]

PROVIDED ALSO that nothing herein contained shall impose on the Proprietor any liability to pay an annuity in excess of the amount required to discharge the advances actually made and the interest thereon :]

(3) THAT if at any time any of the said instalments, or any part thereof, shall be in arrear, or if default shall be made in the observance or performance of the statutory obligations of the Proprietor, then and in such case the whole of the said principal money for the time being remaining unpaid shall forthwith, in accordance with the statutory provisions, become payable, and shall be paid with interest at the stated rate (e) by the Proprietor to the Council on demand. When whole of principal becomes payable.

2. (1) THE Council hereby covenant with the Proprietor that if the Proprietor shall observe and perform the covenants (other than the foregoing covenant for payment of principal and interest) and obligations, statutory or otherwise, which ought on his part to be observed and performed, the Council will (subject as hereinafter provided) advance to the Proprietor a further sum of £—— on the surveyor for the time being of the Council Covenant to make further advances.(f)

(c) This merely defines the obligations with regard to the particular transaction and should be inserted. The actual periods for payment of the instalments are left by the statute to agreement.

(d) See L. P. Act, 1925, s. 94 (1) (c).

(e) This defines the statutory position in regard to the stated rate.

(f) Under L. P. Act, 1925, s. 94, the council will obtain a first charge for the entire advance by reason of the obligation imposed to make the further advances notwithstanding that the mortgagor may make a subsequent mortgage of which notice is given to the council.

certifying that the said intended buildings have been duly roofed in, and a final advance of £—— on the said surveyor certifying that the said intended buildings have been completed fit for habitation in all respects.

(2) PROVIDED that the said building operations shall be continued in accordance with the reasonable requirements of the said surveyor in regard to workmanship and materials, and in accordance with the plans and specifications which have been submitted to and approved on behalf of the Council.

(3) IF any difference arises in regard to any of the matters aforesaid, the decision of the said surveyor shall be binding and conclusive.

Legal charge.

3. (1) THE Proprietor, As Beneficial Owner, hereby charges by way of legal mortgage :

ALL the property described in the First Part of the First Schedule hereto ;

WITH the payment to the Council of the principal money, interest and instalments and other money which ought under this deed and the statutory obligations of the Proprietor to be paid :

(2) FOR the purposes of this Charge the legal right of redemption ceases at the time when the Council take possession under the powers conferred by the Principal Acts.(*g*)

Terms of the charge.

4. PURSUANT to the Principal Acts this Charge is made upon and subject to the following conditions, namely :—

(1) The said advance shall be repaid with interest within —— years from the date hereof :

(2) The interest shall be at the rate of £— per cent. per annum :

(3) The repayment shall be made by an annuity of principal and interest combined and the instalments thereof shall be paid monthly on the first Monday in each month, such monthly payments commencing in the month next succeeding the date hereof :

(4) The amount of each monthly payment shall be £—— :

(5) The Proprietor may, in accordance with sub-section (5) of section one of the said Act of 1899, repay the whole of the outstanding principal or part thereof in accordance with that sub-section, and the amount so outstanding and the amount by which the annuity would be reduced, where a part of the advance is paid off, shall be determined by Table A. hereto annexed :(*h*)

(*g*) See Act of 1899, ss. 5 and 6.

(*h*) This is the only proviso for redemption. The old form of proviso is not required in the case of a charge by way of legal mortgage.

(6) The provisions contained in sections three and four of the said Act of 1899 (copies whereof are for convenience set forth in the Second Schedule hereto) have effect, for the purposes of this Charge, subject to the following variations namely—

(i) Sub-section (5) of section three shall take effect subject to the provisions of section one hundred and ten of the Law of Property Act, 1925, so far as they require the leave of the Court to be obtained ;

(ii) The reference to section one hundred and twenty-five of the Bankruptcy Act, 1883, shall be construed as a reference to section one hundred and thirty of the Bankruptcy Act, 1914 :

(7) For the purposes of paragraph (*c*) of sub-section (1) of section three of the said Act of 1899, the amount for which the messuage and buildings comprised in this Charge shall be insured by the Proprietor shall be not less than £ —— [when completed and while the house is in course of erection the buildings and materials shall be insured for such sums as the surveyor of the Council shall from time to time direct] :

(8) Section one hundred and three of the Law of Property Act, 1925, shall not apply to the exercise of the statutory power of sale for the purposes of this Charge, but in lieu thereof, as between the Proprietor and the Council, the power of sale conferred by the last mentioned Act, together with the powers incidental thereto, shall (subject as hereinbefore provided) be exercisable in the events in which under the Principal Acts the Council have power to order a sale :

(9) Nothing herein contained shall take effect so as to confer any power on the Council inconsistent with the provisions of the Principal Acts save for the purpose of conferring powers consequential on the amendments effected by the Law of Property (Amendment) Act, 1924, and the Law of Property Act, 1925.

In witness, &c.

The First Schedule.

First Part.

Description of the Freehold Property hereby charged.

All that, &c.

Second Part.

The parties to the Conveyance of even date hereinbefore referred to are as follows :—

1.

2.

THE SECOND SCHEDULE.

Sections three and four of the Act of 1899.
(*Set out these sections.*)

SIGNED, SEALED, &c.

No. X.

MORTGAGE *of* LEASEHOLDS *to a* DISTRICT COUNCIL *under the* SMALL DWELLINGS ACQUISITION ACTS, 1899 *to* 1923, *as amended by the* HOUSING ACT, 1921.(*i*) (*Legal Estate.*)

THIS LEGAL CHARGE is made, &c. (*Parties as in last Precedent*) : WHEREAS :—

Local authority.

(1) The Council (*continue as in last Precedent*) :

Title to leaseholds.

(2) The Proprietor is the Proprietor within the meaning of the Principal Acts of the [house and] land described in the First Part of the First Schedule hereto, being the owner thereof in possession for the residue of the term of years granted by the Lease mentioned in the Second Part of that Schedule [the said property having, by an Assignment (*j*) bearing even date with but executed immediately before this Charge and made between the parties mentioned in the Third Part of that Schedule, been assigned to the Proprietor] :

Acquisition under the Acts.

(3) The said property (*continue as in recital* (3) *of last Precedent*) :

NOW, pursuant, &c. (*as in last Precedent*), THIS DEED WITNESSETH as follows :—

1, 2, 3 *and* 4 (*as in paras.* 1, 2, 3 *and* 4 *of last Precedent*).

Power of attorney as respects the head term.

5. IF, and so far (if at all) as the provisions of section eighty-nine of the Law of Property Act, 1925, shall not apply to this Charge by reason of any exception contained in sub-section (6) of that section and so far as the estate or interest of the Proprietor may not have become vested in the Council by virtue (*k*) of sections five and six of the said Act of 1899, or otherwise the Proprietor hereby irrevocably appoints the Council and the persons deriving title under them and their substitutes jointly and severally to be the attorneys or attorney of the Proprietor in his name or in the name of the estate owner for the time being and on his behalf and as his act and deed or otherwise to do all or any of the following things :

(*i*) See notes to last Precedent.

(*j*) These words in square brackets should be omitted if the lease is granted directly to the proprietor.

(*k*) These sub-sections appear to be saved by L. P. Act, 1925, s. 7 (3) (*c*).

(1) On any exercise of the statutory power of sale to make such assignments to a purchaser thereunder of the head term or leasehold reversion in the property or any part thereof, and with the same consequences as if section eighty-nine aforesaid were applicable :

(2) After a foreclosure order (*l*) absolute is made to make such assignments of the head term or leasehold reversion aforesaid as may be required to vest the same in the Council or the persons deriving title under them as if that order had applied thereto and with the same consequences as if sub-section (2) of the said section were applicable :

(3) After acquiring a title under the Limitation Acts (*m*) to execute and do all such assignments and things as may be expedient for acquiring the said head term or leasehold reversion (so far (if at all) as not already vested in the Council under sections five and six aforesaid) as if a vesting deed has been executed pursuant to sub-section (3) of that section :

(4) To deal with fixtures and chattels personal (*n*) in like manner as if sub-section (4) of the said section were applicable to the security hereby made :

(5) At any time after the said power of sale has become exercisable to arrange with the Lessor and any other necessary parties for the legal apportionment of the rent reserved by the Lease mentioned in the Second Part of the First Schedule hereto, to the intent that henceforth the said section shall apply to the security hereby made.

IN WITNESS, &c.

THE FIRST SCHEDULE.

First Part.

Description of the Leasehold Property hereby charged.

ALL THAT, &c.

Second Part.

Date of Lease.	Parties.	Term.	Yearly Rent.

(*l*) The Council might apply for foreclosure in order to avoid having to account to the proprietor under s. 5 of the Act of 1899.

(*m*) The Act of 1899 originally only had to pass the right of redemption. Until it is decided that ss. 5 and 6 now apply to the legal estate it will be expedient to retain this power.

(*n*) The sub-section speaks of chattels personal in order to avoid questions as to what are or are not strictly fixtures.

[Third Part.

The parties to the Assignment of even date hereinbefore mentioned are as follows:—

1.

2.]

THE SECOND SCHEDULE.

Sections three and four of the Act of 1899.

(*Set out these sections.*)

SIGNED, SEALED, &c.

SECTION III.

MORTGAGES ARRANGED ACCORDING TO THE SUBJECT-MATTER OF THE SECURITY.

GROUP A.—MORTGAGES OF PUBLIC-HOUSES.

No. I.

MORTGAGE *of a* FREEHOLD PUBLIC-HOUSE. (*Legal Estate.*)

Parties

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c., licensed victualler (hereinafter called the Borrower), of the one part, and the —— Company Limited, whose registered office is at —— (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Seisin of Borrower.

(1) THE Borrower is seised in fee simple in possession free from incumbrances of the property hereinafter described:

Agreement for advance.

(2) THE Mortgagees have agreed to advance to the Borrower the sum of £—— upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Covenant to pay principal and interest.

1. THE Borrower hereby covenants (*Form No.* 4, p. 72), AND so long as (*Form No.* 6, p. 73, *see also next Precedent*).

Legal charge.

2. (*Legal Charge, Form No.* 10, p. 74.)

Assignment of goodwill and benefit of licences.

3. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees,

ALL THAT the Goodwill (*a*) of the business of a Licensed

(*a*) The goodwill should be expressly assigned, see *Re Bennett* [1899], 1 Ch 316; 68 L. J. Ch. 104.

Victualler carried on upon the premises hereinbefore charged, And the full benefit of all licences (*b*) held in connexion with the said business;

Compensation which may be payable under Licensing (Consolidation) Act, 1910.

AND ALSO full right to recover and receive All compensation, which may at any time become payable to the Borrower or the persons deriving title under him by virtue of the Licensing (Consolidation) Act, 1910,(*c*) or any amendment thereof, on account of the non-renewal of any of the said licences under the provisions of the said Act or any amendment thereof,

TO HAVE AND RECEIVE the premises unto the Mortgagees absolutely, but subject to redemption in the same events as the premises hereinbefore charged.

Compensation.

4. THE Borrower hereby irrevocably nominates (*continue as in Form No.* 22, p. 84, *power of attorney to recover compensation, &c.*).

Covenants by Borrower.

5. THE Borrower hereby covenants with the Mortgagees in manner following (that is to say):—(*continue as in Form No.* 23, p. 85, *but omit the clause relating to a tied house, unless the Mortgagees are brewers, &c.*).(*d*)

6. (*Form No.* 17, p. 80, *covenant against registration.*)

7. (*Form No.* 14, p. 78, *power to appoint manager of business.*)

8. (*Form No.* 38, p. 99, *restriction on leasing, &c., powers.*)

9. (*Form No.* 16, *p.* 79, *attornment clause.*)

10. (*Form No.* 48, *p.* 104, *definitions.*)

IN WITNESS, &c.

No. II.

MORTGAGE *of a* LEASEHOLD PUBLIC-HOUSE *to a* COMPANY *of* BREWERS. (*Legal Estate.*)

Parties.

THIS LEGAL CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and —— &

(*b*) It should be ascertained, by inspection of the register, that the licence is in order.

Compensation where licences withdrawn.

(*c*) As to compensation, see *Law Guarantee, &c., Socy.* v. *Mitcham, &c. Co.* [1906], 2 Ch. 98; 75 L. J. Ch. 556; *Dawson* v. *Braime's, &c., Brewery* [1907], 2 Ch. 359; 76 L. J. Ch. 588; *Re Bentley's, &c., Breweries* [1909], 2 Ch. 609; 78 L. J. Ch. 704; *Bent's Brewery Co.* v. *Dykes* [1909], 100 L. T. 476. See also, as respects reversionary terms, the saving of compensation obligations at the end of sub-s. 4 of s. 149 of the L. P. Act, 1925.

Second mortgage to distillers.

(*d*) This Precedent can readily be adapted to a second mortgage to distillers, &c.; in this case the legal charge will be made expressly subject to this mortgage, and a land charge must be registered as the second mortgagees would not have the deeds: L. P. Act, 1925, s. 97. Registration in a local deeds register or under the L. R. Act, 1925, takes the place of the registration of a land charge.

Company, Limited, whose registered office is at, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Lease to Borrower.

(1) BY a Lease (*recite Lease to the Borrower*).

Agreement for advance of fixed sum and further advances.

(2) THE Mortgagees have agreed to advance to the Borrower the sum of £——, and also such further sums (*e*) as hereinafter mentioned, upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Covenant to pay principal and interest and other money owing to the Company.

1. (*Forms Nos.* 4, and 6, pp. 72, 73):

AND ALSO that the Borrower will on demand, or if no demand shall be made in his lifetime, his personal representatives (without any demand) will, on his death, pay to the Mortgagees all such money (over and above the said sum of £—— and the interest thereon) as at the time of such demand or death, as the case may be, shall be owing from the Borrower to the Mortgagees for goods sold, money lent, or on any other account whatever, with interest thereon from the date of such demand or death at the rate of £— per cent. per annum.

How demand to be made.

2. ANY demand for payment of such money as aforesaid may be made by a notice in writing signed by any two or more of the Directors of the Mortgagees, and the provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to every such notice.

Legal charge.

3. (*Legal Charge of the Public-house, Form No.* 10, p. 74. *If only part of the property comprised in the lease is mortgaged and the rent has not been apportioned, Form No.* 11, p. 75, *must also be used to give the requisite powers of attorney, see infra.*)

Assignment of goodwill, &c.

4. (*As in clause* 3 *of last Precedent.*)

Stamp.

(*e*) This deed must be stamped *ad valorem* up to an amount sufficient to cover the whole of the principal money intended to be advanced. This Precedent can be adapted to a mortgage to distillers, see note to last Precedent.

Further advances.

There being no obligation to make further advances, the mortgagees cannot continue to do so after receiving notice of a second mortgage, save by arrangement with the subsequent mortgagees: L. P. Act, 1925, s. 97; but they can continue to do so without making any further search till such notice is given: *ib.*

Powers for Company to take possession and manage.

5. (1) THE Mortgagees shall have power, at any time after the —— day of —— next :

(i) To enter into the possession or receipt of the rents and profits of the premises or any part thereof, and conduct and manage the business thereof ;

(ii) To grant or enter into any leases or agreements for leases thereof for such terms, at such rents, and subject to such covenants and conditions as the Mortgagees shall think fit, and in particular any such lease or agreement may contain a covenant on the part of the lessee not to buy or receive, or sell or dispose of, upon the premises, any beer, ale, stout, porter or other malt liquors [wines, spirits or other intoxicating liquors], except such as shall be supplied by the Mortgagees, and the same may be made in part consideration of a fine or premium ;

(iii) To accept surrenders of leases and tenancies upon such terms in all respects as the Mortgagees may think proper, and make allowances to and arrangements with tenants ;

(iv) To employ such agents or receivers to manage and conduct the business or to collect the rents of the premises, and at such salaries or commission as may be thought fit ;

(v) To expend such money for repairs, insurance or otherwise, in relation to the premises, as may be deemed expedient :

PROVIDED that any money so expended, with interest thereon at the rate of £— per cent. per annum from the time of the expenditure thereof, shall be repaid by the Borrower to the Mortgagees on demand, and in the meantime shall be a charge on all the premises :

(2) THE powers conferred by this clause on the Mortgagees may, with the leave, in writing, of the Mortgagees, be exercised by any receiver appointed by them under their statutory power :

(3) PROVIDED that all leases granted under the foregoing powers shall be made in the name of the estate owner as required by statute.

Statutory powers of leasing, &c.

6. WHILE the Mortgagees or their receiver shall be in possession of the premises the powers conferred by sections ninety-nine and one hundred of the Law of Property Act, 1925, shall in addition to the powers aforesaid be exercisable by the Mortgagees or (subject to being delegated by the Mortgagees) by their receiver, and not by the Borrower.(*f*)

Taking possession.

(*f*) A mortgagee cannot contract out of his obligations imposed by law on him if he takes possession : *Mayer* v. *Murray* (1878), 8 Ch. D. 424. The

Statutory power of sale to apply with modifications.

7. (1) THE powers of sale and of appointing a receiver conferred upon mortgagees by the Law of Property Act, 1925, shall apply to this security, but without the restrictions imposed upon the exercise thereof by section one hundred and three of that Act :

(2) UPON any sale under the statutory power the Mortgagees may, if they think fit, allow the whole or any part of the purchase-money to remain on mortgage of the property sold.

Covenants by Borrower to keep up licences.(*g*)

8. THE Borrower hereby covenants with the Mortgagees that so long as any money remains due on this security—

(i) THE Borrower will duly preserve and keep on foot and, as often as may be necessary without being expressly required, renew the justices' and excise licences for the premises and will pay all sums and execute and do all instruments and things necessary or proper for that purpose, and also will, on demand by any one or more of the directors for the time being of the Mortgagees, from time to time produce or deliver at the registered office of the Mortgagees all the licences relating to the premises and all renewals thereof, And at all times at his own cost execute and do all such assurances, instruments, and things as shall be requisite for transferring and vesting the said licences or any of them to and in the nominees of the Mortgagees or as any one or more of the directors for the time being of the Mortgagees shall direct, and for withdrawing the name of the Borrower from the books of the excise in respect of the premises :

As to fixtures

(ii) THE Borrower will not sever from the premises any trade or other fixtures now fixed or hereafter to be affixed to the premises except for the purpose of renewing or replacing the same by other fixtures of equal or greater value :

To conduct business properly and in accordance with Licensing Acts.

(iii) THE Borrower will at all times manage and conduct the said business in a lawful, orderly, and proper manner, and will not at any time commit, or suffer to be committed, any offence against, or refuse or neglect to comply with, any of the provisions of any Acts of Parliament for the time being in force relating to public-houses or the sale of intoxicating liquors, and will not do or suffer to be done anything whatsoever by reason whereof the said licences respectively may be curtailed, forfeited, suspended or destroyed, or the renewal thereof withheld, or

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better plan is for the mortgagees to appoint a receiver under their statutory power.

(*g*) This clause extends the covenants given in Form No. 23, p. 85, see notes to that form.

whereby the said business or the goodwill thereof may in any way be or be liable to be prejudicially affected, or which may render or tend to render the Borrower liable in respect of the premises to the payment of a penalty, or which may disqualify him from receiving or holding the justices' or excise licences for any period:

Not to sell beer, &c., other than what is supplied by Company.

(iv) THE Borrower will not consume or sell, or permit to be consumed or sold, in or upon the premises, any ale, beer, porter, or stout, or other malt liquors [wines, spirits or other intoxicating liquors] other than such as shall have been purchased or taken from the Mortgagees: Provided that the Mortgagees be willing to supply the same to the Borrower at the fair market price of the day :(*h*)

As to trade boards.

(v) THE Borrower will permit the agents and workmen of the Mortgagees at all reasonable times to enter upon the premises to put up, take down, and replace the trade boards of the Mortgagees:

To pay charges under Licensing Act, 1910.

(vi) THE Borrower will pay (*continue as in clause* (3) *of Form No.* 23, *p.* 85):

To insure against fire and against forfeiture of licences.

(vii) THE Borrower will insure (*continue as in clause* (4) *of Form No.* 23).

Power of attorney for Company to recover compensation, apply for the renewal of licences, &c.

9. THE Borrower hereby irrevocably appoints the Mortgagees and the persons deriving title under them, (*i*) or their substitutes, jointly and severally, to be the attorney or attorneys of the Borrower, in his name and on his behalf or otherwise—

(1) To recover and give receipts for any compensation payable under the Licensing (Consolidation) Act, 1910, as aforesaid:

(2) To apply for and obtain the annual renewal of the justices' and excise licences in respect of the premises, and to sign all proper notices and other documents:

(3) To do all necessary acts for assigning and transferring the same licences to such persons as the directors for the time being of the Mortgagees may think fit, and for withdrawing the entry of the Borrower from the books of the excise in respect of the premises:

(4) To do all other such things as the directors for the time being of the Mortgagees may think fit in or about the premises as effectually as the Borrower himself could do:

(*h*) This covenant is valid, being confined to the continuance of the security, but could not be made to continue in force after the mortgage has been paid off, see note to Form No. 23, p. 85. As to meaning of "market price," see *Charrington* v. *Wooder* [1914], A. C. 71; 83 L. J. K. B. 220.

(*i*) This power is valid: L. P. Act, 1925, s. 128. As to the execution of powers of attorney given to companies: L. P. Act, 1925, s. 74 (4).

(5) From time to time to appoint and remove at their pleasure any substitutes, or agents under them, in respect of all or any of the matters aforesaid upon such terms as the Mortgagees shall think fit:

[(6) *Add Form No.* 11, *p.* 75, *if the property is part only of the premises demised and the rent has not been legally apportioned.*]

(7) AND the Borrower hereby covenants with the Mortgagees to confirm whatsoever the said attorney or attorneys hereby appointed, or any substitutes or agents, appointed by them or him may do or purport to do under the power of attorney herein contained.

Attornment by Borrower.

10. (1) FOR the purpose of better securing the right of the Mortgagees to take possession of the premises hereby charged, the Borrower hereby attorns tenant to the Mortgagees of those premises at the yearly rent of 6*d.*, if demanded:

PROVIDED, that the Mortgagees may, at any time after the execution hereof, enter into and upon the property, or any part thereof, and determine the tenancy hereby created upon giving to the Borrower at least three days' previous notice in writing to quit:(*j*)

PROVIDED ALSO, that the tenancy created by the said attornment shall not convert the Mortgagees into mortgagees in possession or render them liable to account as such.

(2) THE Borrower hereby irrevocably appoints the Mortgagees or the persons deriving title under them or their substitutes jointly and severally to be his attorneys to enter an appearance on his behalf in any proceedings for ejectment and to consent to any judgment or order (whether or not made in a summary way) giving to them the possession of the property hereby charged.

Interpretation clause.

11. IN this deed where the context admits, the expression "the Borrower" includes the persons deriving title under him, and the expression "the Mortgagees" includes their assigns.

IN WITNESS whereof the Borrower has hereunto set his hand and seal, and the Mortgagees have hereunto affixed their common seal, the day and year first above written.

Forcible re-entry.

(*j*) Forcible re-entry, without any process of law, is an offence within 5 Rich. 2, stat. 1, c. 8, see *Edwick* v. *Hawkes* (1881), 18 Ch. D. 199; 50 L. J. Ch. 577; but *cf. Hemmings* v. *Stoke Poges Golf Club* [1920], 1 K. B. 720; 89 L. J. K. B. 744 (re-entry after notice).

Group B.—Mortgages of Mortgage Debts, Policies, Life Interests, and Reversions.

No. I.

SUB-MORTGAGE *or mortgage of a* Mortgage Debt *secured on* Freeholds *by* Demise.(*k*) (*Legal Estate.*)

THIS SUB-MORTGAGE is made, &c., Between A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: Whereas:— Parties.

(1) By a Deed (hereinafter called the Principal Mortgage), dated, &c., and made between X. Y. of the one part, and the Borrower of the other part, certain freehold property at —— was conveyed by the said X. Y. (who was then seised in fee simple) to the Borrower in fee simple, subject to redemption on payment by the said X. Y. to the Borrower of the sum of £1,000, with interest thereon at the rate of £— per cent. per annum, on the —— day of ——, 19—: Principal Mortgage.

(2) By virtue of the Law of Property Act, 1925, the said property became vested in the Borrower for a term of 3,000 years without impeachment of waste, subject to cesser on payment of the principal money and interest secured by the Principal Mortgage [and subject to the said mortgage term, the said property became vested in the said X. Y. in fee simple]: Creation of Statutory Mortgage term.

(3) The said principal sum of £1,000 still remains owing to the Borrower, with the current interest thereon: Principal sum remains due.

(4) (*Form No.* 2A, *p.* 71): Agreement for advance.

(*k*) Notice of the sub-mortgage must be given to the original mortgagor. Sub-mortgages of freeholds by sub-demise.

As the principal mortgage term is a term of years absolute, it can only be mortgaged by sub-demise or by a charge by way of legal mortgage: L. P. Act, 1925, s. 86. Where a sub-mortgagee of freeholds takes a sub-term, when he sells, he can convey the fee simple. On the sale the principal mortgage term will, in favour of the purchaser, be enlarged into the fee simple and the sub-mortgage term will be extinguished: *ib.*, s. 88 (1) (5). A demise operates to pass the "possession": *ib.*, s. 149, just as an appointment of a term passed it under the Statute of Uses before 1926, but this does not put a mortgagee "into possession" for the purpose of rendering him liable to account. Even the taking of possession by a mortgagee does not *ipso facto* convert the legal estate of the mortgagor into an equitable interest: *ib.*, s. 95 (4). As to a mortgagee acquiring title under the Limitation Acts: *ib.*, ss. 88 (3), 89 (3). This Precedent can be readily adapted for the purposes of a sub-mortgage where the original mortgage was created by a sub-demise of leaseholds. In this case the term created by the sub-mortgage should be a few days shorter than the sub-term created by the principal mortgage. The sub-mortgagees will on a sale be able to convey the head term created by the lease affected by the principal mortgage: L. P. Act, 1925, s. 89 (5).

Demise passes "possession."

Limitation Acts.

Variation where the original mortgage affected leaseholds.

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to pay principal and interest.

1. (*Covenant to pay principal money and interest, Forms Nos. 4 and 6, pp. 72, 73.*)

Borrower assigns mortgage debt.

2. The Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee,

ALL THAT the principal sum of £1,000 now owing to the Borrower upon the security of the Principal Mortgage, and all interest now due and henceforth to become due for the same, and the benefit of all securities for the same (including the statutory power of sale),

TO HOLD unto the Mortgagees absolutely, subject to the proviso for redemption hereinafter contained.

Sub-demise by Borrower.

3. THE Borrower, As Beneficial Owner, hereby demises unto the Mortgagees,

ALL AND SINGULAR the freehold property comprised in the Principal Mortgage,

TO HOLD unto the Mortgagees for the residue of the term of 3,000 years, now taking effect under the Principal Mortgage as aforesaid (less the last ten days of that term) without impeachment of waste, subject to the right of redemption now subsisting under the Principal Mortgage and affecting the principal mortgage term, and also subject to the proviso for cesser hereinafter contained.

Proviso for redemption and cesser.

4. IT is hereby provided, that on payment on the —— day of —— next by the Borrower or the persons deriving title under him to the Mortgagees or the persons deriving title under them of the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, the said principal sum and interest, and the property hereinbefore respectively assigned and demised shall, at the request and cost of the Borrower or the persons deriving title under him, be duly reassigned and surrendered to him or them, subject as to the said freehold property to such right of redemption (if any) as shall for the time being be subsisting therein under the Principal Mortgage and to the intent that on such redemption as aforesaid the sub-term hereby created shall cease.

Provision for indemnity of Mortgagees.

5. PROVIDED ALSO, that it shall not be obligatory upon the Mortgagees or the persons deriving title under them to sue for or require payment of the said principal money and interest hereby

assigned, or any part thereof, unless they shall think fit so to do, nor shall they be responsible for any loss which may arise by reason of their omission or delay to enforce any of the said securities for the said principal sum and interest, or any part thereof.

IN WITNESS, &c.(*l*)

No. II.

SUB-MORTGAGE *or mortgage of a* MORTGAGE DEBT *secured on* FREEHOLDS *by a Charge by way of Legal Mortgage.*(*m*) (*Legal Estate.*)

THIS SUB-MORTGAGE is made, &c. (*parties as in last Precedent*): WHEREAS:— Parties.

(1) By a Deed (hereinafter called the Principal Charge) dated, &c., and made between X. Y. of the one part and the Borrower of the other part, the said X. Y. (being then seised in fee simple in possession free from incumbrances of the property hereinafter mentioned) charged, by way of legal mortgage, certain freehold property at ——, with the payment to the Borrower of the principal sum of £—— and interest thereon at the rate of £— per cent. per annum on the day therein mentioned and since passed, which sum with the interest thereon the said X. Y. thereby covenanted to pay: Legal Charge.

(*l*) A sub-mortgagee is substantially in the position of a transferee of the principal mortgage, hence when he sells he should see that the power of sale has become exercisable under that mortgage as well as under the sub-mortgage; but if the statutory power of sale applies or there are express similar powers, the purchaser will not be concerned to see that the powers of sale are exercisable as against the respective mortgagors, but only that they have arisen (*e.g.*, six months having passed since dates of loans) in favour of purchasers. See also last note as to the operation of the power to sell. Sale by a Sub-mortgagee.

A sub-charge affecting the debt owing on the security of a registered charge is regulated by L. R. R. 1925, rr. 163–166. Its form, effect, and mode of completion (including implied covenants) are the same as in the case of a charge. Prec. No. VII of Group A. of s. 1 will apply, adding to the heading, after "Title No.," a reference to the Charge thus: "Charge No.— registered —— of ——, 19— " and omitting "being seised in fee simple " and continuing " as Beneficial Owner hereby charge the mortgage debt secured by the charge above referred to with the payment," &c. In the case of freehold land subject to a rent, the proper covenant for indemnity can be implied by reference to L. P. Act, 1925, s. 77. Subcharge affecting registered land.

(*m*) When the principal mortgage is effected by a Legal Charge, a sub-mortgage thereof must take the form (as in the text) of a transfer of the principal mortgage, for the original mortgagee has no term in the land, though under L. P. Act, 1925, s. 87, he is in the same position as if he had a sub-term: *ib.*, 5th Sch., Form No. 1, footnote. Notice of the sub-mortgage must be given to the original mortgagor.

Principal remains owing.

(2) The said principal sum of £—— still remains owing with the current interest thereon :

(3) (*Agreement for advance, Form No.* 2A, *p.* 71) :

NOW, in pursuance of the said agreement and in consideration of the said sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to pay.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Transfer of principal charge.

2. THE Borrower, As Beneficial Owner, hereby conveys and transfers to the Mortgagees the benefit of the Principal Charge, but subject to the proviso for redemption hereinafter contained.(*n*)

Proviso for redemption.

3. IT is hereby provided that on payment on the —— day of —— next by the Borrower or the persons deriving title under him to the Mortgagees or the persons deriving title under them of the sum of £—— (*the sum now advanced*), with interest thereon from the date hereof at the rate of £— per cent. per annum, the Principal Charge shall, at the request and cost of the Borrower or the persons deriving title under him, be duly re-transferred to him or them, but subject as to the security created by the Principal Charge to such right of redemption or provision for cesser (if any) as shall for the time being be subsisting thereunder.

Provision for indemnity.

4. (*As in Clause* 5 *of last Precedent.*)

IN WITNESS, &c.(*o*)

No. III.

MORTGAGE *of a* POLICY *of* ASSURANCE *effected on the* LIFE *of the* BORROWER,(*p*) *a* SURETY *joining* VARIATIONS *where* SEVERAL POLICIES *are mortgaged.*

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c.

(*n*) For the effect of a transfer in this form, see L. P. Act, 1925, s. 114, and 3rd Sch.

When the sub-mortgagee sells he will be able to convey the fee simple, for the principal charge is vested in him : L. P. Act, 1925, ss. 88 and 89.

Variations where the principal charge affects leaseholds.

The above Precedent can be readily adapted where the principal charge affected leaseholds. In this case the lease will be recited and then the principal charge ; the operative parts will be the same. The sub-mortgagee on selling will be able to convey the head term created by the lease : L. P. Act, 1925, s. 89 ; he is in the position of a mortgagee under a charge by way of legal mortgage.

Position of sub-mortgagor after a transfer.

(*o*) After the borrower (being the sub-mortgagor) has parted with his legal charge, he has only a right of redemption to deal with if he desires to effect a second sub-mortgage, but such a transaction is seldom required ; it is better and generally feasible to call in the principal mortgage, pay off the sub-mortgage and retain the balance.

Registered land.

As to registered land, see note to last Precedent.

Notice of

(*p*) Notice in writing (in duplicate) of this mortgage should be given to the

(hereinafter called the Borrower), of the 1st part, S. B., of, &c. (hereinafter called the Surety), of the 2nd part, the —— Insurance Society, Limited, whose registered office is at —— (hereinafter called the Mortgagees), of the 3rd part, [and X. Y., of, &c., the Actuary of the Mortgagees (hereinafter called the Trustee),(*q*) of the 4th part]: WHEREAS:—

Title to policy. Variation where several policies.

(1) The Borrower is now entitled to the policy of assurance hereinafter mentioned and assigned [the several policies of assurance particulars whereof are contained in the Schedule hereto]:

Agreement for advance.

(2) (*Form No.* 2A, *p.* 71):

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid at the request of the Surety by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Joint and several covenant to pay principal and interest.

1. (*Covenant by the Borrower and the Surety to pay principal money and interest, Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Assignment of policy.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees [Trustee]:

ALL THAT policy of assurance effected in the name and on the

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mortgage of insurance policy.

assurance office under the Policies of Assurance Act, 1867, unless the policy is taken out with or in the names of the mortgagees. That Act gives to the assignee the right to sue upon the policy in his own name (s. 1), provided that a written notice of the date and purport of the assignment shall have been given to the company liable under the policy at their principal place of business (s. 2).

Trustee of a mortgaged fund may safely pay over whole to mortgagee, but is not bound to do so.

Under L. P. Act, 1925, s. 107, the receipt of a mortgagee is a sufficient discharge for any money or securities comprised in his mortgage. Though under this section the trustees of a mortgaged fund may on its falling into possession safely pay the whole to the mortgagee, they may reasonably decline to pay more than is actually due on the security, particularly if they have notice of subsequent incumbrances: *Re Bell* [1896], 1 Ch. 1; 65 L. J. Ch. 188; *Hockey* v. *Western* [1898], 1 Ch. 350; 67 L. J. Ch. 166. The insurance company, in the case of a mortgage of a policy, is in the same position as a trustee in this respect.

A mortgage of a policy without other security is somewhat unusual, save for the purpose of securing a current account; a life interest is generally included, see next Precedent.

It should be ascertained by inquiries at the assurance office that there are no subsisting charges on the policy, see *Newman* v. *N.* (1885), 28 Ch. D. 674; 54 L. J. Ch. 598; also L. P. Act, 1925, s. 137.

Merger.

(*q*) Though under L. P. Act, 1925, s. 185, there is no merger at law where there would be none in equity, still it is the better practice, where the policies are effected with the office of the mortgagees, to assign them to a trustee for the insurance society. If the policies have not been effected with the mortgagees, no trustee will be joined as a party.

life of the Borrower for the sum of £—— with the —— [Mortgagees] Assurance Company dated the —— day of ——, numbered ——, and at the annual premium of £—— and the said sum of £—— assured by and all bonuses and other money to become payable under the said policy and the full benefit of the said policy :

Variation where several policies.

[ALL THOSE [*five*] policies of assurance effected in the name and on the life of the Borrower mentioned in the Schedule hereto, and all bonuses and other money to become payable thereunder and the full benefit thereof :]

TO HAVE AND RECEIVE the same unto the Mortgagees [unto the Trustee, In trust for the Mortgagees but] subject to the proviso for redemption hereinafter contained :

[PROVIDED that the Mortgagees may by writing remove the Trustee or any of his successors in office from being a trustee or trustees for the purposes hereof and the statutory power to appoint a new trustee shall be vested in the Mortgagees (*r*) :]

Proviso for redemption.

3. IT IS HEREBY PROVIDED (*Forms Nos.* 9 *and* 9B, *leaving out in No.* 9B *the words in brackets referring to the cesser of mortgage terms, p.* 74).

Covenant by Borrower to keep up policy.

4. THE Borrower hereby covenants with the Mortgagees in manner following (that is to say) (*continue as in Form No.* 20, *p.* 83).

Power to surrender policy to Company.

5. PROVIDED that any policy (*continue as in Form No.* 21, *p.* 84).

6. (*Form No.* 35, *p.* 95.)

Liability of surety.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of policies on the life of the Borrower.

Schedule where several policies.

—	Date of Policy.	Office in which effected.	Number of Policy.	Sum Assured exclusive of Bonus.	Annual Premium.
				£	£ s. d.
1	10th May, 1870	— Society	1,001	4,000	80 0 0
2	1st June, 1871	— Company	10,400	5,000	104 2 6
&c.	&c.	&c.	&c.	&c.	&c.

Appointment of new trustees.

(*r*) As to the statutory power to appoint new trustees, whether in the place of a trustee who is removed or otherwise, see T. Act, 1925, s. 36 (1) (2); where a trustee is removed a new trustee may be appointed in his place as if he were dead : *ib.*; as to implied vesting declarations which are applicable to things in action, such as policies : *ib.*, s. 40 (1) (*b*).

No. IV.

MORTGAGE *of a* LIFE INTEREST *in* LAND *and in* CAPITAL MONEY *and of* POLICIES *of* ASSURANCE *to an* ASSURANCE SOCIETY.(*s*) (*Equitable Interest in land.*)

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., E. F., of, &c., G. H., of, &c., and K. L., of, &c. (the Estate Trustees of the —— Assurance Society, a memorial of whose names has been duly enrolled in the Central Office of the Supreme Court of Judicature pursuant to the Assurance Society's Act, 18—, and which four persons are hereinafter called the Mortgagees) [*or* the —— Assurance Society Limited, whose registered office is at —— (hereinafter called the Mortgagees)] (*t*) of the other part: WHEREAS:— Parties.

(1) Under the Will dated the —— day of ——, and proved on the —— day of —— at the —— Probate Registry, of X. Y., deceased, who died on the —— day of ——, and of which M. and N. (hereinafter called the Trustees) are the present trustees for the purposes of the Settled Land Act, 1925, and by virtue of the Law of Property Act, 1925, and a Vesting Deed [Vesting Assent], dated, &c., the manors, messuages, lands and other freehold property described in the First Schedule hereto, and known as the Z. Estate, are now vested in the Borrower in fee simple, subject to the incumbrances mentioned in the Third Schedule hereto, Upon trust for the Borrower during his life without impeachment of waste, with remainders over. And the Borrower is also entitled to the annual income to arise during his life from the investments mentioned in the Second Will under which the Borrower is tenant for life.

(*s*) As no legal interests are conferred, this security can take the form usually adopted before 1926. Notice in writing (in duplicate) of this mortgage must be given to the S. L. Act trustees of the Will and to the assurance office by which the policy was issued: L. P. Act, 1925, s. 137; if a trust corporation: *ib.*, s. 138, has been appointed to receive and register notices, then notice should be given to it. If the life interest affects registered land a priority caution must be lodged at the Land Registry, to be entered in the Minor Interests Index. A caution against dealings is not recommended as a mortgage of the life interest does not affect the statutory powers of a tenant for life: S. L. Act, 1925, s. 104. Notices.

(*t*) The mode of effecting assurances by registering a memorial of any change among trustees at the Central Office is saved by L. P. Act, 1925, s. 7 (3) (*c*), but there must be very few, if any, assurance societies continuing to use this method. It is, however, applicable in connexion with the appointment of certain other classes of trustees. If the Insurance Company are the mortgagees and the policies are effected with them, join a trustee, see last Prec. Assurances by memorial.

Schedule hereto now standing in the joint names of the Trustees, which investments are liable to be laid out in the purchase of land to be made subject to the limitations affecting the freehold property by the said Will devised in settlement :

Title to policies.

(2) The Borrower is entitled to the policies of assurance effected in his own name and on his own life hereinafter mentioned and assigned :

Agreement for advance.

(3) The Mortgagees have agreed to advance (*continue Form No.* 2A, *p.* 71) :

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows :—

Covenant to pay principal and interest.

1. THE Borrower (*Form No.* 4, *p.* 72),

AND ALSO (*Form No.* 6, *p.* 73).

Demise of life estate.

2. THE Borrower, As Beneficial Owner, hereby demises (*u*) unto the Mortgagees,

Parcels.

ALL THAT mansion house called ——, with the lands thereto belonging, and all the manors, messuages, lands, tithes, rents and other freehold property in or arising in the Parishes of N. and B. or one of them, in the County of G. (which lands contain together —— acres or thereabouts, and are more particularly described in the First Schedule hereto) And all other (if any) the lands and other real estate and chattels real (other than advowsons) now or which may hereafter become subject to the limitations of the Will of the said X. Y., deceased,

Habendum.

TO HOLD unto the Mortgagees for an equitable term of ninety-nine years from the date hereof, if the Borrower shall so long live, without impeachment of waste, SUBJECT so far as affected thereby to the several incumbrances mentioned in the Fourth Schedule hereto, AND SUBJECT ALSO to the proviso for redemption hereinafter contained.

Assignment of life interest in capital money.

3. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees ;

ALL THAT the annual income to arise during the life of the Borrower from the investments mentioned in the Second Schedule hereto or from the varied investments for the time being representing the same and all other (if any) the annual income to which he is now or may hereafter become entitled in respect of any capital money investments or other personal

Effect of demise of life interest.

(*u*) A bargain and sale is no longer an available assurance: L. P. Act, 1925, s. 51 ; but a demise passes the " possession " without actual entry : *ib.*, s. 149.

estate [(except chattels settled as heirlooms)] for the time being liable to be laid out in the purchase of land to be settled on the trusts of the said Will,

TO HAVE AND RECEIVE the same unto the Mortgagees subject to the proviso for redemption hereinafter contained.

Assignment of policies.

4. THE Borrower (*continue as in Clause 2 of last Precedent, leaving out the parts in square brackets if a separate trustee is not employed and referring to the* Third Schedule).

Proviso for redemption.

5. IT IS HEREBY PROVIDED (*Form No.* 9, *p.* 74, *and continue* "the property hereinbefore demised and assigned shall at the request and cost of the Borrower or the persons deriving title under him be duly surrendered and reassigned to him or them by endorsed receipt (*v*) or otherwise").

Covenant by Borrower to insure against fire during his life.

6. THE Borrower hereby covenants with the Mortgagees that the Borrower will, during his life and so long as any money remains due under this deed, insure (*continue as in Form No.* 18, p. 81).

Covenant to keep up life policy.

7. THE Borrower hereby further covenants with the Mortgagees (*Form No.* 20, *p.* 83).

Power to surrender life policy to insurers.

8. PROVIDED that any policy (*continue as in Form No.* 21, *p.* 84).

Restriction on application of capital money.

9. No investment or application of capital money for the time being affected by this Deed shall be made without the consent of the Mortgagees or the persons deriving title under them, except an investment in securities authorised by statute for the investment of capital money.

IN WITNESS, &c.(*w*)

Endorsed receipts.

(*v*) For endorsed receipts, see L. P. Act, 1925, s. 115; this mode of reconveyance or discharge is available for all classes of property except registered land. In the case of building society mortgages &c., the registrar will accept an endorsed receipt as sufficient.

(*w*) If it is intended that the money shall not be called in during a certain time provided the mortgagor so long lives, see and adapt Form No. 31, p. 92.

Saving of statutory powers.

No clause is required for saving the statutory powers; these remain exercisable without the consent of the mortgagees: S. L. Act, 1925, s. 104 (4); but by that sub-section a restriction as in clause 9 in the text is imposed.

Tenant for life parting with beneficial interest.

It is unnecessary for the mortgagees to grant an annuity to a tenant for life who has parted with his beneficial interest so long as he continues to exercise his statutory powers in a reasonable way (compare *Re Hope* (1911), 28 L. T. R. 93), for if he proves recalcitrant the court may under s. 24 authorise the S. L. Act trustees to exercise the powers in his name.

Remedies of mortgagees of life interests.

Purchasers and mortgagees of life interests have the remedies of legal owners, and can thus sue tenants for rent, &c.: *ib.*, s. 111. They are not entitled to the title deeds relating to the settled land, but have the same rights as if the tenant for life had given a statutory acknowledgment and undertaking for production and safe custody: *ib.*

Documents.

THE FIRST SCHEDULE.

Particulars of the property demised.

THE SECOND SCHEDULE.

Particulars of capital money and investments.

THE THIRD SCHEDULE.

Particulars of the Policies hereby assigned.

THE FOURTH SCHEDULE.

Particulars of incumbrances.

Amount Secured.	Date of Mortgage.	Present Mortgagees.	Rate of Interest.

No. V.

MORTGAGE *of a* LIFE INTEREST *in the proceeds of* SALE *of* LAND *held on Trust for Sale*, INVESTMENTS *and a* POLICY *of* ASSURANCE.(*x*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and

Notice to trustees, &c., and enquiries.

(*x*) Notices in writing (in duplicate) of this mortgage must be given to the assurance office by which the policy was issued and to the settlement trustees. It must be ascertained from the settlement or endorsements thereon whether or not a trust corporation has been appointed to register notices; if so, notice must be given to that corporation: L. P. Act, 1925, ss. 137-8. If the title to the land held on trust for sale has been registered a priority caution must be entered in the Minor Interests Index. A caution against dealings is not recommended as the assignment of the life interest does not affect the powers of the trustees for sale. Notice to the solicitors of the trustees is not sufficient: *Saffron Walden, &c., Socy.* v. *Rayner* (1880), 14 Ch. D. 406; 49 L. J. Ch. 465; and see *Davis* v. *Hutchings* [1907], 1 Ch. 356; 76 L. J. Ch. 272. Notice to one of several trustees is effectual so long as he remains trustee: *Ward* v. *Duncombe* [1893], A. C. 369; 62 L. J. Ch. 881; unless he s himself the mortgagor: *Lloyds Bk.* v. *Pearson* [1901], 1 Ch. 865; 70 L. J. Ch. 422; *Re Dallas* [1904], 2 Ch. 385, 412; 73 L. J. Ch. 365. Notice to all the existing trustees remains effectual notwithstanding death or retirement: *Re Wasdale* [1899], 1 Ch. 163; 68 L. J. Ch. 117; *Re Phillips* [1903], 1 Ch. 183; 72 L. J. Ch. 94. As to the proper persons to whom to give notice in the case of a derivative trust, see *Stephens* v. *Green* [1895], 2 Ch. 148; 64 L. J. Ch. 546. As to the duties of trustees with reference to enquiries (1) as to prior incumbrances, see *Low* v. *Bouverie* [1891], 3 Ch. 82; 60 L. J. Ch. 594; *Davis* v. *Hutchings, supra*; (2) as to state of investment, *Re Dartnall* [1895], 1 Ch. 474; 64 L. J. Ch. 341. As to constructive notice of prior mortgages, see *Re Weniger* [1910], 2 Ch. 291; 79 L. J. Ch. 546. Notice to trustees is not

E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Settlement and Conveyance on trust for sale.

(1) Under a Conveyance on Trust for Sale dated, &c. (being a conveyance of the lands mentioned in the First Schedule hereto) those lands are now [by virtue of the Appointments of New Trustees mentioned in the Third Schedule hereto] vested in X. and Y. (hereinafter called the Trustees) on trust for sale and under a Settlement bearing even date with and made between the same parties as the said Conveyance, the Borrower is entitled during his life to the net rents and profits of the said lands until sale and to the annual income of the investments representing the proceeds of sale of the said land if and when sold and of the investments mentioned in the Second Schedule hereto, now held on the trusts of the said Settlement [*or*, on the trusts affecting the husband's [*or* wife's] trust fund under the said Settlement] or of the varied investments for the time being representing the net proceeds of sale aforesaid and the investments so held, and which investments are now standing in the names of the Trustees as the present trustees of the said Settlement:(*y*)

Title to policy.

(2) The Borrower is also entitled to the policy effected in his own name and on his own life hereinafter mentioned and assigned:

Agreement for advance.

(3) The Mortgagees have agreed to advance to the Borrower the sum of £—— out of money belonging to them upon a joint account upon having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower

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equivalent to a demand for payment of the income of the mortgaged property: *Re Pawson* [1917], 1 Ch. 541; 86 L. J. Ch. 380. As to form of notice, see *Denney* v. *Conklin* [1913], 3 K. B. 177; 82 L. J. K. B. 953. The matters relating to notices and enquiries are explained in 1 Wolst. & Cherry, 11th ed., in the notes to L. P. Act, 1925, ss. 137-8. The objects are two-fold, first, to obtain priority for the dealing, and secondly, to prevent the funds being distributed without notice of the claim.

Form of notice.

Where the fund is in court a stop order must be obtained, see R. S. C., O. 46, rr. 12, 13. Where the fund is not in court it may sometimes be desirable to give notice, in lieu of the old writ of *distringas*, to the company in whose books the stock or securities stand, see *ib.*, rr. 2, *et seq.* Where the Public Trustee acts as custodian trustee, notice should be given both to him and to the managing trustees: Withers, 117.

Stop order; *distringas*.

Custodian trustees.

(*y*) If the funds are in court this should be recited with the title to the action and fund and Form No. 33, p. 94, should be used, see Prec. xiii, p. 249, *infra*.

Funds in court.

(the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Covenant to pay principal and interest.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Assignment of life interest.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees,

FIRST, ALL the net rents, profits and income arising during the lifetime of the Borrower from the lands mentioned in the First Schedule hereto so long as the same remain unsold and from any investments from time to time representing the net proceeds of sale of the said lands or any part thereof or representing any other capital money attributable to the said lands and arising under the exercise of any statutory or express power applicable thereto:

SECONDLY, ALL the annual income to arise during the life of the Borrower from the investments mentioned in the Second Schedule hereto, or from the varied investments for the time being representing the same, and ALL other (if any) the annual income to which the Borrower is now or may hereafter become entitled under the said Settlement: (*z*)

AND THIRDLY, ALL THAT policy of assurance, &c. (*as in clause* 2 *of Prec. III of this Group, p.* 226),

TO HAVE AND RECEIVE the same unto the Mortgagees, subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. IT is hereby provided (*Form No.* 9, *and continue*—the property hereinbefore assigned shall, at the request and cost of the Borrower or the persons deriving title under him, be duly re-assigned to him or them by endorsed receipt or otherwise).

Covenant by Borrower to keep up policy.

4. THE Borrower hereby covenants with the Mortgagees in manner following (that is to say)—(*Form No.* 20, *p.* 83).

Power to surrender policy to insurers.

5. PROVIDED that any policy (*continue as in Form No.* 21, *p.* 84).

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of land held on trust for sale.

Reversionary life interest.

(*z*) If he is entitled to a reversionary life interest in the wife's fund and this is to be excluded, add here:—"otherwise than in respect of the wife's trust fund thereby settled."

If the reversionary life interest is to be included, it should be mentioned in the recitals and parcels, also the Second Schedule should state the investments representing that fund in a separate part.

THE SECOND SCHEDULE.

Particulars of investments.

THE THIRD SCHEDULE.

Particulars of Appointments and Changes among the Trustees.

[*Note.—Separate appointments must be made in regard to the Conveyance on trust for sale and the Settlement respectively, T. Act*, 1925, *s.* 35. *This Schedule should state the deaths of trustees before referring to a consequential appointment. If there have been no changes among the trustees this Schedule will be omitted.*]

No. VI.

WARRANT *of* ATTORNEY *to confess* JUDGMENT *as a* COLLATERAL SECURITY *for payment of money secured by* MORTGAGE *of a* POLICY OF ASSURANCE.(*a*)

To E. F., of, &c., and G. H., of, &c., solicitors of His Majesty's Supreme Court of Judicature, jointly and severally, or to any other solicitor of the same Court:

Warrant of attorney to confess judgment.

THESE ARE TO DESIRE AND AUTHORISE you, the solicitors above named, or either of you, or any other solicitor of the said Court,

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(*a*) A warrant of attorney to confess judgment is sometimes, though seldom, given as a collateral security for a mortgage debt. The judgment is generally for double the amount of the principal sum to be secured, and the warrant is accompanied by a defeasance showing the object of the transaction. It is conceived that the Act of 1869 does not apply to an ejectment action.

Statutory provisions as to warrants of attorney.

The Debtors Act, 1869, provides that a warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall not be of any force unless there shall be present some attorney of one of the superior Courts on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney: s. 24. A warrant of attorney not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof or was fully informed of the same: s. 25. Section 26 provides that where in an action a warrant of attorney to confess judgment is given, and the same or a true copy thereof is not filed in the Central Office within twenty-one days after the execution thereof, as required by 3 Geo. 4, c. 39, the same, shall be deemed fraudulent and void; and if any such warrant of attorney was given subject to any defeasance or condition, such defeasance or

Attestation.

Filing.

Defeasance.

to appear for me, A. B., of, &c., in the High Court of Justice (King's Bench Division), in an action of debt for £—— for money lent, at the suit of C. D., of, &c., and thereupon to confess the said action, or suffer a judgment to pass against me in the same action, and to be thereupon forthwith entered up against me of record of the same Court for the sum of £—— and costs of suit:

AND I, the said A. B., hereby further authorise and empower you or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign, seal and execute a good and sufficient release in the law to the said C. D. of all and all manner of errors, defects and imperfections whatsoever made, committed, done or suffered, or to be made, committed, done or suffered in, about or concerning the aforesaid judgment, or the proceedings relating thereto: AND I DECLARE that this power of attorney shall be irrevocable for one year from the date hereof:

AND whatsoever you, or any one of you, shall do or cause to be done in the premises, or any of them, this shall be to you and to every of you a sufficient warrant or authority:

AND I DECLARE that I have expressly named L. M., of, &c., a solicitor of the Supreme Court aforesaid, and requested him to attend on my behalf to inform me of the nature and effect of this instrument.

IN WITNESS whereof I have hereunto set my hand and seal the —— day of ——, 19—.

A. B.

SIGNED, sealed and delivered by the said A. B. in the presence of L. M., of ——, in the County of ——, one of the solicitors of His Majesty's Supreme Court of Judicature. And I, the said L. M., declare that I am the solicitor for the said A. B. expressly named by him and attending at his request, and that I have informed him of the nature and effect

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condition shall be written on the same paper or parchment with the warrant before the filing thereof, otherwise the warrant shall be void.

Registration. The judgment to be entered up under the warrant of attorney must be registered and re-registered every five years: L. C. Act, 1925, s. 6.

Stamp. The above warrant of attorney being a collateral security, the stamp on it will be 6*d.* for every £100 of the principal sum secured, but subject to a maximum of 10*s.*: Stamp Act, 1891, Schedule, "Mortgages"; Revenue Act, 1903, s. 7.

of the above-written instrument before his execution thereof, and that as his solicitor I subscribe my name as a witness to the due execution hereof.

L. M. (*Signature of defendant's solicitor.*)

No. VII.

DEFEASANCE *to be indorsed on the* WARRANT *of* ATTORNEY *in last Precedent.*

Mortgage of policy.

WHEREAS by a Mortgage bearing even date with the within-written warrant of attorney, and made between (*parties*) in consideration of the sum of £—— paid by the said C. D. to the said A. B., the said A. B. has assigned a policy of assurance on his life for the sum of £——, effected in the —— Assurance Society, and numbered ——, and the money thereby assured, unto the said C. D. as security for the payment of the sum of £——, with interest thereon at the rate of £— per cent. per annum, on the —— day of —— next: AND the said Mortgage contains covenants by the said A. B. for the payment of the said principal sum of £——, and the interest thereon, and to keep on foot the said policy, and to effect a new policy in case the subsisting policy becomes void, and to repay to the said C. D. all money (if any) paid by him in or about the keeping on foot the said policy or in effecting or keeping on foot any such new policy as aforesaid:

Defeasance on payment of principal money and interest secured by Mortgage.

NOW BE IT REMEMBERED, that the within-written warrant of attorney is given as a collateral security for the payment of the principal money and interest secured by the said Mortgage:

AND IT IS HEREBY DECLARED as follows:—

(1) THAT no execution shall be issued or taken out upon any judgment to be confessed pursuant to the said warrant of attorney, unless and until default shall be made in payment of the principal money and interest secured by the said Mortgage, or some part thereof respectively, contrary to the true intent and meaning of the said Mortgage:

(2) THAT in case default shall be made in payment of the said principal money and interest, or any part thereof respectively, contrary to the true intent and meaning of the said Mortgage, then and in such case the said C. D., or the persons deriving title under him, shall have power to sue out such execution or

executions, or other process, upon or by virtue of any such judgment, as he or they shall think fit or be advised for the recovery of such principal money and interest respectively, and all costs, charges and expenses which he or they shall sustain or incur by reason of the non-payment of such principal money and interest respectively, or any part thereof:

(3) THAT after the full payment to the said C. D., or the persons deriving title under him, of the said principal money and interest, and of all such costs, charges and expenses as aforesaid, he or they shall, on the request and at the cost and charges of the said A. B. or the persons deriving title under him, acknowledge satisfaction of any such judgment upon the record thereof, in due form of law, and do all further or other acts, matters or things, which may be reasonably required for releasing and extinguishing all right and remedy upon any such judgment, and all executions thereupon respectively.

IN WITNESS, &c.

No. VIII.

ASSIGNMENT *of a* POLICY *of* ASSURANCE *by way of* ADDITIONAL SECURITY.

Parties.

THIS FURTHER SECURITY is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Supplemental to Principal Mortgage.

(1) This deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made, &c., whereby certain policies of assurance effected on the life of the Borrower were assigned by him to the Mortgagees by way of mortgage for securing payment to the Mortgagees of the sum of £3,000, with interest thereon at the rate of £5 per cent. per annum:

Money remains due.

(2) The said sum of £3,000 remains owing on the security of the Principal Deed with the current interest thereon:

Title to policy.

(3) The Borrower is entitled to the further policy of assurance effected in his own name and on his own life hereinafter mentioned and assigned:

Agreement to give further security.

(4) The Borrower has, with a view to the said mortgage debt not being immediately required to be paid by the Mortgagees, agreed to assign the said policy to the Mortgagees by way of further security in manner hereinafter appearing:

NOW, in pursuance of the said agreement and for the considerations aforesaid, THIS DEED WITNESSETH as follows :—

1. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees : Assignment of further policy to Mortgagee.

ALL THAT, &c. (*continue as in clause* 2 *of Prec. III of this Group, p.* 227, *supra*),

TO HAVE AND RECEIVE the same unto the Mortgagees, subject to the like right of redemption as is now subsisting under the Principal Deed in respect of the policies of assurance thereby assigned. Habendum.

2. (1) ALL the covenants, powers and provisions contained in the Principal Deed shall extend and apply to the policy hereby assigned, as if corresponding covenants, powers and provisions had been herein inserted : Provisions in original Mortgage to extend to this policy.

(2) IF any money shall be paid by the Mortgagees or the persons deriving title under them in respect of the policy hereby assigned, or of any policy to be substituted therefor, by reason of the default of the Borrower to pay such money, then the policies and premises comprised in the Principal Deed, and any policies substituted for the same, shall, as well as the policy hereby assigned, stand charged with the repayment of such money and the interest thereon.

IN WITNESS, &c.

No. IX.

MORTGAGE *by a* REMAINDERMAN *entitled* IN FEE SIMPLE *subject to a* LIFE INTEREST *and to* FAMILY CHARGES.(*b*) (*Equitable Interest.*)

THIS MORTGAGE is made, &c., BETWEEN R. L., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., Parties.

(*b*) As no legal interest is created the form is very similar to that used before 1926. It is not competent for the mortgagees to register a valid land charge, for the interest of the mortgagor arises under a settlement : L. C. Act, 1925, s. 10, Class C (iii) ; if it were registered, for what it is worth, it could not become effective till the mortgagor became entitled in possession free from family charges. Registration of land charge.

So long as the family charges are on foot the settlement remains subsisting : S. L. Act, 1925, s. 3 ; and the representatives of the deceased tenant for life will not execute a vesting assent in favour of the mortgagor without nominating therein S. L. Act trustees ; nor will they thereafter execute a deed of discharge under s. 17 till the family charges have been cleared. If the jointress is dead Duration of Settlements. Deed of discharge.

E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Will made before 1926.

(1) X. L., deceased, being at his death seised in fee simple in possession free from incumbrances of the property mentioned in the First Schedule hereto duly made his Will dated the —— day of ——, and thereby after appointing O. P. and R. S. (hereinafter called the Trustees) to be his executors and the trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, devised the freehold property mentioned in the First Schedule hereto (with other property) To the use of his son T. L. (who was born on ——) during his life without impeachment of waste and subject thereto To the use that Jane L. (who was born ——) the wife of the said T. L. should, if she survived the said T. L., receive during the residue of her life a yearly jointure rentcharge of £——, and subject thereto, To the use of the Trustees for a term of 500 years from the death of the said T. L. without impeachment of waste on the usual trusts for raising portions for the daughters and younger sons of the said T. L. not exceeding in the whole the principal sum of £—— and subject to the said term, To the use of the first and other sons of the said T. L. successively according to seniority in tail male with divers remainders over: And the said Will contained a power for the said T. L. if he remarried to appoint a yearly jointure rentcharge not exceeding £—— to his widow: And the said testator devised and bequeathed his residuary estate to the Trustees on the usual trusts for sale and conversion and after giving directions for the payment out of his ready money and proceeds of the said conversion of his debts and certain legacies (all of which have long since been discharged) directed the Trustees to hold the net balance as if the same were capital money arising from the freehold property so devised in settlement and so as to be primarily liable to be laid out in the purchase of land for an estate in fee simple to be conveyed to the uses aforesaid:

Death of testator, &c.

(2) The said testator died on the —— day of ——, without having revoked or altered his said Will, which was on the —— day of —— duly proved at the —— Probate Registry by the

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it will generally be expedient to discharge the death duties and portions before the special representatives of the deceased tenant for life assent to the land vesting in the successor; in this way an absolute assent can be given without nominating S. L. Act trustees, which shows that the settlement is spent. In the meantime the successor can be allowed to take possession: Ad. of E. Act, 1925, s. 43.

Possession pending an assent.

Trustees as the executors therein named,(*c*) who on the —— day of —— assented to the recited devise :

Sales, &c.

(3) Divers sales have from time to time been made under the said Acts and the investments mentioned in the Second Schedule hereto now represent the capital money arising from the said sales and the net residuary estate of the said testator :

Vesting Deed.

(4) By virtue of the Law of Property Act, 1925, the freehold property mentioned in the First Schedule hereto became vested in the said T. L. in fee simple on the trusts of the said Will and by a Vesting Deed dated, &c., the Trustees pursuant to the Settled Land Act, 1925, declared that the said freehold property was vested in the said T. L. in fee simple on the trusts of the said Will and nominated themselves as the trustees of the Settlement for the purposes of the Settled Land Act, 1925 :

Issue of the tenant for life.

(5) There has been issue of the said T. L. —— children and no more, namely, an eldest son, the Borrower, who was born on —— and —— other children, all of whom have attained the age of twenty-one years and have become indefeasibly entitled to the portions mentioned in the Third Schedule hereto under the appointments therein referred to :

Disentailing assurance.

(6) (*Recite disentailing assurance showing that the Borrower has become entitled to the land and capital money in fee simple or absolutely subject to the life interest, the jointure, the power to charge a jointure if T. L. remarries and the portions*) :

Agreement for advance.

(7) (*Form No.* 2A, *p.* 71.)

NOW, in pursuance, &c., and in consideration, &c., THIS DEED WITNESSETH and it is hereby agreed as follows :—

Covenant to pay principal and interest.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Conveyance of land and capital money.

2. THE Borrower, As Beneficial Owner, hereby conveys and assigns unto the Mortgagees :

FIRST, ALL THOSE, &c. (*Parcels by reference to First Schedule transferring an equitable interest*);

Notices.

(*c*) Notice in writing (in duplicate) of this mortgage must be given to the S. L. Act trustees : L. P. Act, 1925, s. 137 ; it is also expedient to give notice to the tenant for life, though not essential ; if a trust corporation has been appointed to keep a register of notices, then notice must be given to that corporation : *ib.*, s. 138. If the title to the land has been registered, a caution must be entered in the Minor Interests Index. A caution against dealings is not recommended as a mortgage by a remainderman does not affect the powers of the tenant for life or statutory owner who is registered as proprietor. Enquiry should be made of the S. L. Act trustees to ascertain whether they have received any notices. When a charge is registered under the L. R. Act, 1925, the land certificate must be left at the land registry : *ib.*, s. 65.

SECONDLY, ALL, &c. (*Description of capital money and investments referring to Second Schedule*):

TO HOLD unto the Mortgagees in fee simple or absolutely subject to the life interest therein of the said T. L. and the family charges and powers of charging aforesaid and also subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. IT IS HEREBY PROVIDED (*Form No. 9 and continuing*) the premises hereinbefore conveyed and assigned shall, at the request and cost of the Borrower or the persons deriving title under him, be duly reconveyed or reassigned to him or them by endorsed receipt or otherwise.

Covenant to pay death duties.

4. THE Borrower hereby covenants with the Mortgagees that upon the death of the said T. L. the Borrower or the persons deriving title under him will forthwith discharge all duties which may become payable in respect of the premises and produce to the Mortgagees or the persons deriving title under them such evidence of such discharge as they may reasonably require, and will at all times hereafter keep indemnified the Mortgagees and the persons deriving title under them from all interest and claims in respect of such duties.

Accumulations.

5. (*Accumulation clause, Form No. 32, p. 93.*)

Covenant to execute legal mortgage and power of attorney.

6. (1) THE Borrower hereby covenants with the Mortgagees that if and when by reason of the death of the said T. L. and the cesser or discharge of the said family charges and powers of charging or otherwise the Settlement created by the said Will shall determine the Borrower or the persons deriving title under him will forthwith at his or their cost execute or cause to be executed a Legal Mortgage (whether by a charge by way of legal mortgage or by demise or sub-demise or by registered charge or otherwise as the Mortgagees or the persons deriving title under them may think fit and containing such provisions as they may reasonably require) of all land affected by this security for securing payment of the principal money (including accumulations of interest) and interest then remaining owing on this security and for that purpose will require that the special personal representatives of the said T. L. or the Settled Land Act trustees for the time being or the registered proprietor (as the case may require) shall vest the legal estate in the said land in the Borrower or the persons deriving title under him without nominating trustees for the purposes of the Settled Land Act, 1925, or shall execute a deed of discharge pursuant to section

seventeen of that Act, or execute any necessary registered disposition as the case may require:

(2) THE Borrower hereby irrevocably appoints the Mortgagees and the persons deriving title under them jointly and severally as his attorneys or attorney and as his act and deed or otherwise to prepare and execute such Legal Mortgage or registered Charge as aforesaid and to take all necessary or proper steps which may be required to enable a valid Legal Mortgage and registered Charge or either of such instruments to be executed and registered and to demand that the title deeds and other documents (except a land certificate) relating to the legal estate in such land shall be delivered to the Mortgagees or the persons deriving title under them as part of the said security:

(3) For the purposes of this clause the legal mortgage aforesaid may be effected by separate instruments and in particular a registered Charge may be taken of land the title to which is registered separately from land the title to which is not registered and for that purpose the mortgage debt may be apportioned by the Mortgagees between the properties affected.

IN WITNESS, &c. (*Add three Schedules, the first of the land, the second of the residuary estate, capital money and investments and the third of the appointments of portions to the younger children.*)

No. X.

MORTGAGE *of* REVERSIONARY INTEREST *in a Share in personal estate under a* WILL,—COVENANT *by* SURETY *to pay the* INTEREST.(*d*)

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. B., of, &c. (hereinafter called the Surety), of the 2nd part, and G. H., of, &c., and J. K., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:— Parties.

(1) Under the Will of L. M. (who died on the —— day of ——), dated the —— day of ——, and duly proved in the —— Probate Registry on the —— day of ——, and of which X. and Y. (hereinafter called the Trustees) are the present Trustees, the Borrower is entitled to one equal third share of the residuary personal estate of the said testator in reversion expectant on the Will under which Borrower is entitled to one-third of personal estate.

(*d*) Notice in writing of this deed must be given to the trustees of the Will, see first note to Prec. V of this Group, p. 232, *supra*.

death or remarriage (which first happens) of T. L. (who was born on the —— day of ——), which residuary personal estate is now represented by the investments mentioned in the Schedule hereto and standing in the names or under the control of the Trustees :(*e*)

Agreement for advance.

(2) (*Form No.* 2A, *p.* 71) :

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to pay principal and interest.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Assignment of reversionary share.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees :

ALL THAT the reversionary one-third share or other the share or interest of the Borrower under the recited Will in the investments mentioned in the Schedule hereto, and in all other (if any) the residuary personal estate of the said testator, and the proceeds thereof, and the investments for the time being representing the same,

TO HOLD unto the Mortgagee absolutely, subject to the life interest therein of the said T. L. and to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. IT IS HEREBY PROVIDED (*Forms Nos.* 9 *and* 9B, *p.* 74, *saying* "assigned" *and* "re-assigned").

Covenant by surety to pay the interest in case of default.

4. THE Surety hereby covenants with the Mortgagees that if the Borrower, or the persons deriving title under him, shall fail to pay the interest on the said sum of £——, or any part thereof, for at least fourteen days next after the respective days hereinbefore fixed for the payment thereof, the Surety will on demand pay the interest on the said sum of £——, or so much thereof as the Borrower, or the persons deriving title under him, shall have failed to pay as aforesaid.

5. (*Form No.* 35, *p.* 95, *Surety to be liable as principal debtor as regards the interest.*)

6. (*Accumulation clause, Form No.* 32, *p.* 93.)

7. (*Covenant to pay duty as in clause* 4 *of last Precedent.*)

[*Add special clauses, if required.*]

IN WITNESS, &c. (*Add Schedule of investments.*)

Mortgage of funds in court.

(*e*) If the funds are in court this should be recited, and Form No. 33, p. 94, should be added.

No. XI.

MORTGAGE *by* TENANT FOR LIFE *and* REVERSIONER *of their interests in the* RESIDUARY *personal* ESTATE *and the proceeds of sale of* LAND *of a* TESTATOR. *The* REVERSIONER *joining as* SURETY. (*f*) (*Equitable Interests.*)

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. B., of, &c. (hereinafter called the Surety), of the 2nd part, and E. F., of, &c., and J. K., of, &c. (hereinafter called the Mortgagees), of the 3rd part : WHEREAS :— Parties.

(1) (*Recite Will of G. B., whereby, after making certain devises and bequests, he gave all the residue of his real and personal estate to trustees* (*hereinafter called the Trustees*) *upon trust for sale and conversion, to invest proceeds, and pay income to the Borrower* (*his wife*), *for her life, and after her death, as to capital and income upon such trusts as she should by deed or Will appoint among his issue and in default, In trust for children who attain twenty-one, or in case of daughters marrying, in equal shares :*) Death, Will and probate.

(2) (*Death of testator and probate of his Will :*)

(3) By an Assent dated, &c., the Trustees assented to the real estate [and chattels real] mentioned in the first part of the Schedule hereto vesting in themselves Upon trust to sell the same and to hold the net proceeds and the rents and profits until sale on the trusts declared concerning the same by the said Will : Assent on trust for sale.

(4) There were issue of the said G. B. two children and no more, of whom the Surety (who was born on the —— day of ——) is one : Issue two children, and that reversioner is one.

(*f*) Notice of this deed must be given in writing to the trustees of the Will, see note to Prec. V of this Group, p. 232, *supra*, or to the trust corporation, if one has been appointed to register notices. If the title to any of the land held on trust for sale has been registered a priority caution must be entered in the Minor Interests Index. A caution against dealings is not recommended, the mortgage of the equitable interests in the proceeds of sale does not affect the powers of the trustees for sale who will be the registered proprietors. Notices.

Though after 1925 it will not be possible for a tenant for life and remainderman to make a title to land, for such title can only be made under the S. L. Act, there is no objection to the tenant for life of the proceeds of sale of land held on trust for sale (as in the text) joining with the reversioner to deal with their equitable interests. Where land is held in trust for sale, the persons to make title thereto are the trustees for sale, not the tenant for life of the proceeds of sale, though the leasing powers, &c., may be delegated to the tenant for life : L. P. Act, 1925, s. 29. Dealings by tenant for life and remainderman.

Death of infant.

(5) D. B., the other child of the said marriage (who was born on ——) died an infant and without having been married, on the —— day of ——, 19—:

Reference to Schedule.

(6) Particulars of the property and investments now representing the residuary real and personal estate of the said testator are contained in the Schedule hereto, and the same are now vested in or standing in the joint names or under the control of —— as the present trustees of the said Will:

Agreement for advance.

(7) The Mortgagees, at the request of the Borrower, and also of the Surety, have agreed to advance to the Borrower the sum of £——, on having the repayment thereof, with interest as hereinafter mentioned, secured in manner hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees at the request of the Surety to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Joint and several covenants by tenant for life and reversioner to pay principal and interest.

1. THE Borrower and the Surety hereby jointly and severally covenant with the Mortgagees, &c. (*Forms Nos.* 4 *and* 6, *pp.* 72–3).

2. (1) EACH of them, the Borrower and the Surety, As Beneficial Owner, according to her and his respective interest, hereby assign unto the Mortgagees:

Tenant for life and reversioner assign life interest and reversion.

FIRST, ALL the income payable to the Borrower during her life under the recited Will in respect of the property and investments mentioned in the Schedule hereto and other the residuary real and personal estate thereby devised and bequeathed, and the proceeds of sale thereof and the investments for the time being representing the same,

AND SECONDLY, ALL THAT the interest to which the Surety is entitled under the said Will in reversion expectant on the death of the Borrower in the said residuary real and personal estate, proceeds and investments,

Habendum.

TO HOLD unto the Mortgagee absolutely, SUBJECT to the proviso for redemption hereinafter contained:

Covenant not to exercise power.

(2) THE Borrower hereby covenants with the Mortgagees and also separately with the Surety that she will not exercise the recited power of appointment in favour of the issue of the Surety so as in any way to affect prejudicially the security hereby made and to the extent aforesaid the Borrower hereby releases the said power which shall nevertheless remain in force save so far as any exercise thereof might affect this security.

3. IT IS HEREBY PROVIDED that on payment on the —— day of ——, by the Borrower or the Surety, or the persons respectively deriving title under them, to the Mortgagees or the persons deriving title under them, of the said sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, the premises hereinbefore assigned shall at the request and cost of the Borrower and the Surety, or the persons respectively deriving title under them, be duly reassigned by an endorsed receipt or otherwise to her, him or them, according to their respective interests therein. Proviso for redemption.

4. PROVIDED that as between the Borrower and the premises first hereby assigned on the one hand, and the Surety and the premises secondly hereby assigned on the other hand, the Borrower and the premises first hereby assigned shall be primarily liable for the payment of the principal money and interest hereby secured, but this provision shall not affect the rights and remedies of the Mortgagees or the persons deriving title under them or the enforcement thereof in such order and manner as they may think fit. Order of liability.

[*If an undivided share in the proceeds of land were mortgaged Form No.* 15, *p.* 79, *should be used.*]

5. PROVIDED ALSO that without prejudice (*continue as in Form No.* 35, *p.* 95). Surety to be liable as principal debtor.

6. (*Add covenant by the Surety to pay duties on death of Borrower, as in Clause* 4, *Prec. IX of this Group, p.* 242, *referring to the* "Borrower" *in place of* "T. L." *and to* "the Surety" *in place of* "the Borrower.")

IN WITNESS, &c. (*Add Schedule giving particulars of residuary estate and placing the real estate in the first part, the leaseholds in the second part, and the investments in the third part.*)

No. XII.

MORTGAGE *of a* REVERSIONARY INTEREST *in* PERSONALTY *in the proceeds of sale of* LAND *and of a* POLICY *on the* LIFE *of the* BORROWER. INTEREST *in arrear to be converted into* PRINCIPAL, *the* MORTGAGEE *not to* CALL IN MONEY *until either* POLICY *or* REVERSIONARY INTEREST *falls in.*(*g*) (*Equitable Interest.*)

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., Parties.

(*g*) Notice of this mortgage must be given to the trustees of the Will and Notice.

and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Will, death, &c.

(1)—(3) (*Recite Will under which the Borrower is entitled to a share of the testator's residuary estate held on trust for sale in reversion expectant on the death of L. T., and death of testator and probate of Will and assent, as in last Precedent*):

(4) and (5) (*Recitals as to issue, &c., see last Precedent, as required*):

(6) Particulars, &c. (*as in sixth recital of last Precedent*):

Title to policy.

(7) The Borrower is also entitled to the policy of assurance effected in his own name and on his own life hereinafter mentioned and assigned:

Agreement for advance.

(8) (*Form No.* 2A, *p.* 71):

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Covenant to pay principal and interest.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees:

FIRST, ALL THAT (*reversionary share; see last and next Precedent*):

AND SECONDLY, ALL THAT (*policy*),

TO HAVE AND RECEIVE the same unto the Mortgagees absolutely subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. IT IS HEREBY PROVIDED (*Forms Nos.* 9 *and* 9B, *p.* 74, *and saying* "assigned" *and* "re-assigned").

Covenant by Borrower to keep up policy.

4. THE Borrower hereby covenants with the Mortgagees in manner following (that is to say): (*continue as in Form No.* 20, *p.* 83).

Power to surrender policy to Company.

5. PROVIDED that any policy (*continue as in Form No.* 21, *p.* 84).

Accumulation clause in respect of interest in arrear.

6. THE Borrower hereby also covenants with the Mortgagees (*Form No.* 32, *p.* 93).

Mortgage not to be called in till reversion or policy falls in.

7. (1) THE Mortgagees or the persons deriving title under them shall not (so long as the foregoing covenants as to the said policy are duly performed), until either the reversionary interest hereinbefore assigned falls into possession or until the death

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to the assurance company, see note to Prec. V of this Group, p. 232, *supra*; also notes to last Precedent.

Stamp.

The *ad valorem* stamp should be sufficient to cover the sum lent and the estimated amount which may possibly be added for capitalised interest.

of the Borrower (which first happens), require payment of the principal money hereby secured or any part thereof:

(2) THE Borrower shall allow the whole of the principal money hereby secured to remain on this security until the Mortgagees become entitled to require payment thereof as aforesaid:

(3) PROVIDED (*continue as in Form No* 31, *p.* 92).

8. (*Add Form No.* 15, *p.* 79.)

IN WITNESS, &c. (*Add schedule of the residuary estate in different parts as in last Precedent.*)

No. XIII.

MORTGAGE *of a* REVERSIONARY INTEREST *in a Fund in* COURT. POWER *for* MORTGAGEES *to obtain a* STOP ORDER.(*h*)

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:— Parties.

(1) and (2) (*Recite Will of G. B., under which the Borrower is entitled to a moiety of the testator's residuary personal estate in reversion expectant on the death of T. L.—Death of testator and probate of Will*): Title to reversion.

(3) Under an Order of the Chancery Division of the High Court of Justice made on the —— day of ——, 19—, in an action entitled In the Matter of, &c. —— *v.* ——, 19—, B. No. — (being an order for payment into Court and for investment of the balance of the proceeds of sale of the estate of the said testator after payment of funeral and testamentary expenses, debts, legacies, and duties made in an action for the administration of the estate of the said testator), the residuary estate of the said testator is now represented by the investments mentioned in the Order of Court.

(*h*) A stop order (see Withers, 119, *et seq.*) is sufficient notice for the purposes of priority, for though L. P. Act, 1925, s. 137 (1), applies the general law to equitable interests in land and to capital money, still sub-s. (2), relating to notices to trustees for this purpose, does not apply. As the fund may be paid out to trustees, it is generally expedient to give notice to trustees to prevent any mistake occurring on distribution, if they do not have notice of the stop order. Effect of stop order as regards priority.

Schedule hereto which are standing in the name of the Paymaster General of the Chancery Division to the credit of the said action :

Agreement for advance.

(4) (*Form No.* 2A, *p.* 71) :

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH and it is hereby agreed as follows :—

Covenant to pay principal and interest.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Conveyance of reversionary interest.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees :

Parcels.

ALL THAT moiety or other share to which the Borrower is entitled in expectancy as aforesaid under the recited Will, or otherwise in the investments mentioned in the Schedule hereto, and in all the trust funds, securities and other property at any time hereafter representing the same or any part thereof, and in the income of the premises,

TO HOLD unto the Mortgagees absolutely according to the nature of the property, subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

3. IT IS HEREBY PROVIDED (*Forms Nos.* 9 *and* 9B, *p.* 74, *saying* "assigned" *and* "reassigned").

Accumulation clause in respect of interest in arrear.

4. THE Borrower hereby covenants with the Mortgagees (*continue as in Form No.* 32, *p.* 93).

Power to obtain stop order.

5. THE Mortgagees may at the cost of the Borrower forthwith apply for and obtain a proper order in the said action that no part of the investments mentioned in the Schedule hereto shall be sold or dealt with without notice to the Mortgagees, and upon such application may use the name of the Borrower as concurring in or consenting to the same.

Covenant by Borrower to pay costs of obtaining stop order, &c.

6. THE Borrower hereby also covenants with the Mortgagees that he will on demand (*Form No.* 33, *p.* 94).

7. (*Add covenant to pay duties on death of T. L., the tenant for life, as in clause* 4, *Prec. IX, p.* 242, *of this Group.*)

[8. *Add definition clause, Form No.* 48, *p.* 104, *if required.*]

IN WITNESS, &c.

THE SCHEDULE.

Particulars of funds in Court.

No. XIV.

MORTGAGE *of a* REVERSIONARY INTEREST *in* PROPERTY *to secure a* SUM *payable on the* REVERSION FALLING INTO POSSESSION *in consideration of a* PRESENT PAYMENT *by the* MORTGAGEES *of a* SUM *agreed as the* PRESENT VALUE *of the* REVERSIONARY SUM *secured.*(*i*) (*Equitable Interest.*)

Parties.

THIS MORTGAGE is made, &c. (*Parties and recital of Will under which Borrower is entitled to reversionary share in property in schedule expectant on the death of T. L., death of testator, probate and assent as in Prec. XI, p.* 245 *supra.*)

Agreement for purchase by Mortgagees of reversionary sum in consideration of present payment, and for securing future payment.

(4) It has been agreed that the Mortgagees shall purchase a sum of £——, payable at the expiration of three months after the death of the said T. L., in consideration of the immediate payment of £——, and that the payment of the said reversionary sum of £—— shall be secured in manner hereinafter appearing :

NOW, in pursuance, &c., and in consideration of the sum of £—— now paid, &c. (the receipt, &c.), THIS DEED WITNESSETH and it is hereby agreed as follows :—

Covenant by Borrower to pay principal sum on reversion falling into possession, and in default to pay interest.

1. THE Borrower hereby covenants to pay to the Mortgagees at the expiration of three months after the death of the said T. L., the sum of £—— (*i.e., a larger sum than the amount advanced*), but without interest in the meantime : AND if the said principal sum shall not be duly paid on the day on which the same ought to be paid under the foregoing covenant, then to pay to the Mortgagees interest on the said principal sum or on so much thereof as shall for the time being remain unpaid at the rate of £— per cent. per annum, from that day until the said principal sum shall be fully paid by equal half-yearly payments, the first half-yearly payment to be made at the end of nine months from the death of the said T. L.

Assignment of reversionary interest to secure money covenanted to be paid.

2. (*Assignment of reversionary share to Mortgagees, see foregoing Precedents.*)

Proviso for redemption.

3. PROVIDED that if the said principal sum of £—— shall be paid on the day on which the same ought to be paid under the foregoing covenant the premises shall at the request and cost of the Borrower or the persons deriving title under him be

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(*i*) It is conceived that this mortgage should be stamped *ad valorem* on the reversionary sum secured : Alpe, 18th ed., 205–206 ; *Rowell* v. *I. R. C.* [1897], 2 Q. B. 194. Stamp.

As to notices, see notes to Prec. Nos. V. and XI, *supra.* Notices

duly re-assigned to him or them by an endorsed receipt or otherwise.

(*Add special clauses as required. See foregoing Precedents.*)

IN WITNESS, &c. (*Add Schedule.*)

No. XV.

GRANT *of a* REVERSIONARY ANNUITY *secured on reversionary life interest in Personalty or proceeds of land subject to a provision for* RE-PURCHASE *in consideration of the immediate payment of a* CAPITAL SUM.(*j*) (*Equitable Interest.*)

Parties. THIS GRANT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the 1st part, The —— Assurance Society, Limited, whose registered office is at —— (hereinafter called the Purchasers), of the 2nd part, and C. D., of, &c., the Actuary of the Purchasers (hereinafter called the Trustee), of the 3rd part: WHEREAS:—

Title of Vendor. (1) and (2) (*Recite title of Vendor under Will of X. Y. to reversionary life interest in investments in schedule expectant on death of T. L., who has the first life interest, death of testator, probate, &c.*):

Agreement for sale subject power to repurchase. (3) The Vendor has agreed, in consideration of receiving from the Purchasers the sum of £——, to secure to them the payment of the annual sum of £—— hereinafter granted, subject to such right as hereinafter conferred for the re-purchase of the said annual sum:

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Grant of contingent reversionary annuity. 1. THE Vendor, As Beneficial Owner, hereby grants unto the Purchasers:

Parcels. ONE annual sum of £——, to commence on the day when by the death of the said T. L. or otherwise, the Vendor, if then living, shall become entitled in possession to the income of the investments mentioned in the Schedule hereto, or the investments for the time being representing the same or any part thereof, and to be paid thenceforth during the residue of the life of the Vendor by equal half-yearly payments, the first half-yearly payment to be made at the expiration of six months from

Notices. (*j*) On the grant of a reversionary annuity similar notices must be given as in the case of other dealings with reversionary interests, see the notes to the foregoing Precedents.

the date when the Vendor shall become entitled in possession as aforesaid, but the said annual sum, though payable half-yearly, shall be deemed to accrue from day to day, and shall be charged upon,

Charge.

ALL the annual income to which the Vendor is entitled in expectancy as aforesaid during his life, arising from the investments mentioned in the Schedule hereto, or any other investments subject to the trusts of the recited Will, or the investments for the time being representing the same,

TO HAVE AND RECEIVE the said annual sum unto the Purchasers during the life of the Vendor.

Covenant to pay the annuity.

2. THE Vendor hereby covenants with the Purchasers to pay to them the said annual sum of £——, in manner and at the times in and at which the same is hereinbefore made payable.

Assignment of reversionary income to Trustee.

3. (1) THE Vendor, As Beneficial Owner, hereby assigns unto the Trustee :

ALL the annual income to which the Vendor is entitled in expectancy as aforesaid arising from the investments mentioned in the Schedule hereto, or any other investments subject to the trusts of the recited Will, or the investments or other property for the time being representing the same,

TO HAVE AND RECEIVE the same unto the Trustee for the residue of the life of the Vendor ;

Trusts of reversionary income.

UPON the trusts following (that is to say), Upon trust to receive the same income when the same falls into possession, and to pay thereout from year to year to the Purchasers during the residue of the life of the Vendor the said annual sum of £—— hereby granted to the Purchasers, and, subject to paying the same, to permit the Vendor to receive the said annual income.

(2) THE Purchasers shall have power by deed to remove the Trustee or his successors in office from being a trustee or trustees for the purposes hereof.

(3) THE statutory power to appoint new Trustees shall be vested in the Purchasers for the purposes of the trusts hereof.

Power for Trustee to permit Vendor to receive reversionary income.

4. PROVIDED that the Trustee may, if he thinks fit, allow the Vendor to receive all the said annual income as it accrues due, and shall not be concerned to enforce the payment of the said annual sum by means of the trusts aforesaid, unless and until required in writing so to do by or on behalf of the Purchasers.

Power for Vendor to re-purchase.

5. PROVIDED ALSO, that if at any time after the death of the said T. L. the Vendor shall be desirous of re-purchasing the

annual sum of £——, hereinbefore granted, and shall give to the Purchasers or the persons deriving title under them at least one month's previous notice of such his desire, and shall upon the expiration of such notice or at any time thereafter pay to the Purchasers or the persons deriving title under them the sum of £—— and all arrears of the said annual sum up to the day of payment, together with all sums then due to or incurred by the Purchasers or the persons deriving title under them for the costs and expenses in recovering or enforcing payment of the said annual sum, then and in that case the Purchasers or the persons deriving title under them shall accept the said sum of £—— for the re-purchase of the said annual sum, and the Purchasers and the Trustee shall, at the request and cost of the Vendor or the persons deriving title under him, release the said annual sum and the securities for the same to him or them.

Society to deliver a policy on the life of the Vendor to him if he re-purchases.

6. PROVIDED FURTHER, that on any re-purchase of the said annual sum the Purchasers or the persons deriving title under them shall, at the like request and cost, deliver or assign to the Vendor or the persons deriving title under him, for his and their absolute use and benefit, a non-profit policy on the life of the Vendor effected with the —— Assurance Society for the sum of £——, maintainable thereafter at the annual premium of £——, payable on the same day in each year as the date of completion of the re-purchase [the first premium to be paid by the Purchasers at the request and for the benefit of the Vendor].

IN WITNESS, &c. (*Add Schedule.*)

GROUP C.—MORTGAGES OF LEGACIES, STOCKS AND SHARES, AND PARTNERSHIP ASSETS.

No. I.

MORTGAGE *of a* LEGACY.

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

(1)—(3) (*Recite Will, death, probate and agreement for loan*): NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows:—

Covenant to pay.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees : Assignment of legacy.

ALL THAT the legacy of £—— bequeathed to the Borrower by the recited Will, and which legacy remains unpaid [*or* and which legacy is made payable under the said Will on the death of T. L., who was born on the —— day of ——],

TO HOLD unto the Mortgagees for securing payment of the said principal sum and interest, and so that the Mortgagees and the persons deriving title under them shall have power to receive the said legacy, and to give a valid receipt for the same ; And in that case they shall out of the said legacy pay in the first place the expenses incurred in or about the obtaining payment thereof and all other costs and expenses incidental to this security, and in the next place pay and retain the said sum of £—— and the interest thereon, or so much thereof (if any) as shall then remain undischarged, and shall pay the surplus (if any) of the said legacy to the Borrower. Upon trust to apply same in payment of principal, interest and costs, and to pay surplus to Borrower.

3. (*If the legacy is reversionary, add and adapt Form No.* 32, *p.* 93. *Also, if the legacy is subject to duties, add a covenant by the Borrower to pay them. See Prec. IX, clause* 4, *in last Group.*) Accumulations.

IN WITNESS, &c.(*k*)

No. II.

MORTGAGE *of* STOCK *or* SHARES.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part : Parties.

WHEREAS :— Agreement for advance.

(1) (*Form No.* 2A, *p.* 71.)

(2) With a view to the intended security, the Borrower has, by a Transfer (*l*) bearing even date herewith, transferred unto Transfer of shares by Borrower to Mortgagee.

(*k*) This Precedent may be adapted to a mortgage of a reversionary legacy by altering the parcels. Mortgage of reversionary legacy.

Notice in writing of the mortgage must be given to the executors, see L. P. Act, 1925, s. 137 (3), and the usual enquiries made of them. Notice.

(*l*) Upon a mortgage of stocks or shares the mortgagor should make an absolute transfer of them to the mortgagee for a nominal consideration, according to the form applicable to dealings with the stock or shares, accompanied by a deed explaining the object of the transfer as above. This species of mortgage gives to the mortgagee an absolute control over and power of dealing with the shares as they stand in his name only, and he will be the person to receive the dividends ; but he may, by power of attorney or letter of direction, authorise the mortgagor or his bankers to receive them. The mortgagee should, however, give a notice to the company in lieu of a *distringas*. Transfer of shares.

the Mortgagee the sum of £—— Consolidated Stock of the —— Company [*or* twenty shares of £50 each in the capital of the —— Company, which shares are numbered respectively (*state the numbers of the shares*)]:

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH and it is hereby agreed as follows:—

Covenant to pay principal and interest.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Proviso for redemption.

2. PROVIDED that on payment on the —— day of —— next by the Borrower or the persons deriving title under him of the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, the said stock [shares] shall at the request and cost of the Borrower or the persons deriving title under him, be duly re-transferred to him or them.

Power of sale.(*m*)

3. THE power of sale conferred by the Law of Property Act, 1925, shall apply to this security, but free from the restrictions imposed on the exercise thereof by section one hundred and three of that Act.

As to voting.

4. UNTIL the interest hereby made payable shall be in arrear for thirty days and upwards the Mortgagee shall exercise his voting powers annexed to the premises transferred to him as aforesaid in accordance with the directions of the Borrower.

IN WITNESS, &c.

No. III.

MORTGAGE *of a* SHARE *in a* PARTNERSHIP BUSINESS.(*n*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Agreement by Mortgagee to vote in accordance with the wishes of the Mortgagor.

An agreement by a mortgagee of shares to vote in accordance with the wishes of the mortgagor will be enforced by mandatory injunction: *Puddephatt* v. *Leith* [1916], 1 Ch. 200; 85 L. J. Ch. 185. As long as the mortgagor's name is on the register he is entitled to vote, but must do so in accordance with the wishes of the mortgagee: *Wise* v. *Lansdell* [1921], 1 Ch. 425; 90 L. J. Ch. 178.

As to right of Mortgagee of shares to sell.

(*m*) A mortgagee of shares (the mortgage not being by deed) has an implied power to sell if the money is not paid at the appointed day, or, if no day is appointed, then on the expiration of a reasonable notice: *Deverges* v. *Sandeman* [1902], 1 Ch. 579; 71 L. J. Ch. 328; and see *Stubbs* v. *Slater* [1910], 1 Ch. 632; 79 L. J. Ch. 420. Where the mortgage is by deed, the statutory power is applicable, and should therefore be extended, as in the text.

Accounts.

(*n*) Notice of this mortgage should be given to the firm. A mortgagee cannot, during the continuance of the partnership, require any accounts of

(1) The Borrower carries on in partnership with E. F. the business of —— at ——, under Articles of Partnership dated, &c., And by the said Articles it is provided, &c. (*Recite provisions as to capital and share of profits and showing that the mortgage of a share is not a breach of the Articles for which the Borrower could be removed, or that the other partners have consented*) : Partnership articles.

(2) (*Agreement for advance, Form No.* 2A, *p.* 71) : Agreement for advance.

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows :—

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.) Covenant to pay principal and interest.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees, Assignment of share in partnership.

ALL THAT the share and interest of the Borrower in the said partnership business and in the property and assets thereof and the profits to arise therefrom,

TO HOLD unto the Mortgagees absolutely subject to the proviso for redemption hereinafter contained.

3. IT IS HEREBY PROVIDED (*Forms Nos.* 9 *and* 9B, *p.* 74, *saying* "assigned" *and* "reassigned"). Proviso for redemption.

4. THE Borrower hereby covenants with the Mortgagees that so long as any money remains owing upon this security the Borrower will, from time to time, when required by the Mortgagees or the persons deriving title under them, render to the Mortgagees and the persons deriving title under them such accounts and information relating to the partnership affairs as they shall reasonably require, and as the Borrower can lawfully and properly render or give having regard to the said partnership articles and to the provisions of the Partnership Act, 1890. Covenant to furnish accounts, &c.

IN WITNESS, &c.

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the partnership business, nor has he any right to inspect the partnership books without the consent of all the partners, see P. Act, 1890, s. 31 ; *Watts* v. *Driscoll* [1901], 1 Ch. 294 ; 70 L. J. Ch. 157 ; *Re Garwood's Trusts* [1903], 1 Ch. 236 ; 72 L. J. Ch. 208.

Under s. 6 (5) (*c*) of the Limited Partnership Act, 1907, the other partners are not entitled to dissolve the partnership because a limited partner charges his share for his separate debt. Limited partnership

The mortgagee must inspect the articles to see that there is no covenant against assignment. If there is, the mortgage must be by declaration of trust ; unless the other partners concur, as to which, see next Precedent. Restriction on assignment.

All partnership land will be vested in not more than four of the partners on trust for sale, and the net proceeds and the rents and profits until sale will be held on the trusts requisite for giving effect to the shares and interests of the partners : L. P. Act, 1925, ss. 34-36 ; 1st Sch., Pt. IV. Partnership land.

No. IV.

MORTGAGE *of a* SHARE *in* PARTNERSHIP BUSINESS (*where the other* PARTNER CONCURS).(*o*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, E. F., of, &c. (hereinafter called the Partner), of the 2nd part, and C. M., of, &c., and G. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

(*Recitals as in last Precedent, adding*):

Agreement, by Borrower's partner to join.

(3) The Partner has agreed to join in these presents in manner hereinafter appearing:

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows:—

Covenant to pay.

1. (*Forms Nos.* 4 *and* 6, *pp.* 72, 73.)

Assignment of share.

2. THE Borrower, As Beneficial Owner, with the consent of the Partner (testified by his execution hereof), hereby assigns, &c. (*Assignment of share, as in last Precedent*).

3. (*Proviso for redemption, as in last Precedent.*)

Covenant with consent of partner to furnish accounts, &c.

4. THE Borrower, with the consent of the Partner (testified as aforesaid), hereby covenants with the Mortgagees that so long as any money remains due under this security the Borrower will from time to time, when required by the Mortgagees or the persons deriving title under them, render to them such accounts and information relating to the said partnership business as they may reasonably require, and also will permit them to inspect and take copies of the partnership books.

IN WITNESS, &c.

SECTION IV.

EQUITABLE MORTGAGES AND CHARGES BY DEPOSIT.

No. I.

MEMORANDUM *under* HAND *only, accompanying a* DEPOSIT *of* TITLE DEEDS *or* LAND *or* CHARGE CERTIFICATE *to secure a fixed* SUM.(*p*) (*Equitable Interest.*)

THIS MEMORANDUM OF DEPOSIT made, &c., BETWEEN

(*o*) The concurrence of the mortgagor's partner removes all difficulty as to the right of the mortgagee to be furnished with accounts and to inspect the partnership books: *Bonnin* v. *Neame* [1910], 1 Ch. 732; 79 L. J. Ch. 388.

What provisions in an equitable

(*p*) This instrument is an equitable mortgage as defined by s. 86 (2) of the Stamp Act, 1891, and is chargeable with an *ad valorem* duty of 1*s.* for

A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part:

WITNESSETH as follows:—

Declaration as to purpose of deposit.

1. THE Borrower has this day deposited with the Mortgagee the documents mentioned in the Schedule hereto, with intent to create an equitable mortgage upon all the property comprised therein, or to which the same relate, for securing the repayment to the Mortgagee, on the —— day of —— next, of the sum of £——, this day advanced and paid by him to the Borrower [*or* the sum of £—— now owing from the Borrower to the Mortgagee], together with interest (*q*) thereon at the rate of £— per cent. per annum from the date hereof, such interest to continue payable after the said —— day of —— next, if the said principal sum shall not be paid on that day, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

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every £100, and every fractional part of £100. An equitable mortgage *under seal* must be stamped, like a legal mortgage, with 2*s.* 6*d.* for every £100, see *United Realization Co.* v. *I. R. Commrs.* [1899], 1 Q. B. 361; 68 L. J. Q. B. 218; and, according to the construction put on the Act by the Commissioners of Inland Revenue, a memorandum under hand only, which purports to confer on the equitable mortgagee powers annexed by law to a mortgage by deed, *e.g.*, the statutory powers of sale, appointing a receiver, &c., is liable to the higher duty, see Alpe, 18th ed., 207. If a provision of this kind is desired it is better to have a legal mortgage.

mortgage render it liable to higher stamp.

A deposit of deeds relating to a legal estate operates to create a lien: L. P. Act, 1925, s. 13. An equitable interest protected by such a deposit cannot be over-reached under the statutory powers: *ib.*, s. 2 (3). A tenant for life is not entitled to create a mortgage by deposit under his statutory powers: S. L. Act, 1925, s. 71, save for the purposes of s. 70, *ib.*; but a personal representative can do so: Ad. of E. Act, 1925, s. 39 (1) (i).

Deeds relating to legal estates.

Tenant for life; personal representative.

A mortgage by deposit is not a "puisne mortgage" within L. C. Act, 1925, s. 10, Class C (i); it need not be registered as a land charge in order to secure priority: L. P. Act, 1925, s. 97. But if it contains an agreement to execute a legal mortgage (see clause 2 in the text) this is an "estate contract" and for its protection, independently of the lien, a land charge can be registered: L. C. Act, 1925, s. 10, Class C (iv); see also ss. 13 (2), 14 (2). No legal estate is transferred to a mortgagee by deposit by the vesting provisions: L. P. Act, 1925, 1st Sch., Pt. II, para. 7 (j). Effect may be given to the contract by creating a legal mortgage (*i.e.*, a charge by way of legal mortgage or a mortgage by demise or sub-demise) if the lien ought to have priority over a trust for sale: L. P. Act, 1925, s. 3 (2); similarly, if it ought to have priority over a settlement: S. L. Act, 1925, s. 16 (4). In the case of a deposit of a land certificate or certificate of charge the L. C. Act, 1925, does not apply (s. 23), but a notice of the deposit costing 1*s.* should be placed on the land register. Where the title registered is possessory the deeds should also be deposited.

Puisne mortgages.

"Estate Contracts."

Priority of liens.

Registered land.

(*q*) Interest is payable whether mentioned or not: *Re Drax* [1903], 1 Ch. 781; 72 L. J. Ch. 505.

Agreement to execute legal mortgage.(*r*)

2. THE Borrower, or the persons deriving title under him, shall execute at his or their own cost a legal mortgage of the said property to the Mortgagee for securing all principal money and interest for the time being owing on this security whenever requested so to do, such mortgage to contain such covenants and provisions generally as the Mortgagee may reasonably require.

AS WITNESS, &c. (*Add Schedule of documents.*)

No. II.

MEMORANDUM *under* HAND *only, accompanying a* DEPOSIT *of* TITLE DEEDS *or of a* LAND *or* CHARGE CERTIFICATE *to secure a given* SUM *and future* ADVANCES.(*s*) (*Equitable Interests.*)

THIS MEMORANDUM OF DEPOSIT, &c. (*as in last Precedent*), WITNESSETH as follows :—

Declaration as to purpose of deposit.

1. THE Borrower has this day deposited with the Mortgagee the documents mentioned in the Schedule hereto, with intent

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Remedies of mortgagee by deposit.

(*r*) A mere deposit (with intent to mortgage) without a memorandum gives a right to call for a legal mortgage: *Parker* v. *Housefield* (1835), 2 My. & K. 419; 4 L. J. Ch. 57. The remedies of the depositee are for an order for specific performance, sale, or foreclosure, &c.: Seton, 7th ed., 1982; see also L. P. Act, 1925, s. 90, under which the court can in effect place an equitable mortgagee in the same position as a legal mortgagee for the purpose of making title and can make the requisite vesting orders, or appoint a person, to convey the legal estate affected.

No mortgage term by demise or sub-demise is vested in a mortgagee by deposit under L. P. Act, 1925, 1st Sch., Pts. VII or VIII; but when a legal mortgage is acquired there is no need to register a land charge under Pt. VII, para. 6, or Pt. VIII, para. 5, where the mortgagee has the deeds in order to obtain the benefit of the legal term or sub-term created by the Act. And see the note, *supra*, as to "Estate Contracts." A deposit of documents relating to the title to an undivided share in land only gives a charge on the net proceeds of sale and income attributable to the share. It is not paramount to the statutory trust for sale: L. P. Act, 1925, s. 102; 1st Sch., Pt. IV.

Undivided shares.

Form of legal mortgage.

The addition of the words "Such mortgage to contain such covenants and provisions as the mortgagee may require" does not enable the mortgagee to enlarge the subject-matter of the security or to insert a clause excluding the operation of L. P. Act, 1925, s. 103: *Farmer* v. *Pitt* [1902], 1 Ch. 954; 71 L. J. Ch. 500.

Notice of intention of pay off.

An equitable mortgagee by deposit of title deeds is not entitled to six months' notice or interest in lieu of notice: *Fitzgerald's Trustee* v. *Mellersh* [1892], 1 Ch. 385; 61 L. J. Ch. 231; but the borrower is entitled to the usual notice requiring payment: *Parker* v. *Housefield, supra*.

Stamp.

(*s*) This instrument is chargeable with an *ad valorem* duty of 1*s.* for every £100, and will be a security in respect of the further advances for such an amount as the additional duty will extend to cover, see notes to the last Precedent.

Further advances.

As in this Precedent there is no obligation to make further advances, the mortgagee must not make them after he has notice of a subsequent mortgage;

to create an equitable mortgage on all the property comprised therein, or to which the same relate, for securing the repayment to the Mortgagee on demand of the sum of £——, this day advanced and paid by him to the Borrower [*or* the sum of £—— now owing from the Borrower to the Mortgagee], and of such further money (if any) as shall hereafter, during the continuance of this security, be advanced by the Mortgagee to the Borrower, together with interest on the principal money for the time being owing on this security at the rate of £— per cent. per annum computed as to the said sum of £—— from the date hereof, and as to every other principal sum from the date of the advance thereof, and payable half-yearly on the —— day of —— and the —— day of —— in every year.

Agreement to execute legal mortgage.

2. THE Borrower will execute (*continue as in last Precedent*).

AS WITNESS, &c. (*Add Schedule.*)

No. III.

DEED *to accompany a* DEPOSIT *of* TITLE DEEDS *by way of* EQUITABLE MORTGAGE *to secure a given* SUM [*and future* ADVANCES].(*t*) (*Equitable Interest.*)

THIS DEED OF DEPOSIT, &c. (*continue as in either of last two Precedents, as the case may be, to the end, and then adding as follows*) :

Mortgagee to have statutory powers.

3. (1) IN the meantime and until a legal mortgage is executed as aforesaid the Mortgagee and the persons deriving title under him shall have all the powers conferred on mortgagees by the Law of Property Act, 1925, free from the restrictions imposed by section one hundred and three of that Act :

(2) UPON any sale, lease or other disposition by him or them under the statutory powers, the Borrower, or the persons deriving title under him, shall at his or their request execute a proper conveyance, lease or other disposition which may be required for giving legal effect to the sale, lease or other transaction

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but he will not be deemed to have notice of a subsequent mortgage merely because it was registered as a land charge or in a local deeds register, if it was not so registered at the date of the original advance or when he last searched, whichever last happened : L. P. Act, 1925, s. 94. See also notes to last Precedent.

(*t*) This instrument will require an *ad valorem* stamp of 2*s.* 6*d.* per £100 ; see the note to Prec. I of this Section. If time permits, it is better to take a legal mortgage. Seeing that the form of a legal charge is shorter than the deed in the text, this Precedent can seldom be required after 1925. See notes to last two Precedents.

agreed to be carried out by the Mortgagee or the persons deriving title under him.(*u*)

Power of attorney.

4. THE Borrower hereby irrevocably appoints the Mortgagee and the persons deriving title under him, and his or their substitute or substitutes jointly and severally to be the attorney or attorneys of the Borrower, and as his act and deed or otherwise to execute any such mortgage, conveyance or other disposition hereinbefore agreed to be executed and also to do and execute all such other acts, deeds and things as the Mortgagees or the persons deriving title under them would have been entitled to do or execute if a legal mortgage within the meaning of the said Act had been actually executed at the date hereof for securing the principal money and interest aforesaid.

IN WITNESS, &c. (*Add Schedule of documents.*)

No. IV.

MEMORANDUM *under* HAND *only of* DEPOSIT *of* TITLE DEEDS *or* LAND *or* CHARGE CERTIFICATE, *with a* BANKING COMPANY *to secure* BALANCE OF ACCOUNT CURRENT *and other money.*(*v*) (*Equitable Interest.*)

THIS MEMORANDUM OF DEPOSIT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and The —— Bank, Limited, whose registered office is at ——

Powers of disposition of equitable mortgagee.

(*u*) An equitable mortgagee could not convey the legal estate: *Re Hodson and Howe* (1887) 35 Ch. D. 668; 56 L. J. Ch. 755; and *cf. Re Solomon and Meagher* (1889), 40 Ch. D. 508; 58 L. J. Ch. 339; where the sale was made under Lord Cranworth's Act.

Equitable mortgages otherwise than by deposit.

An equitable mortgage affecting a legal estate in land, otherwise than by deposit, must be protected by registration pursuant to L. P. Act, 1925, s. 97, for it will rank according to the date of registration of the land charge. Only legal mortgages can be registered in a local deeds registry: *ib.*, s. 11.

Powers of mortgagees to convey, &c.

Under L. P. Act, 1925, ss. 88-89, a mortgagee, whether by demise, sub-demise or legal charge, has power (corresponding to the power given by Lord Cranworth's Act) to convey the fee simple or the head term, or to acquire it by foreclosure or under the Limitation Acts. The distinction is that if the mortgage is of part of the property comprised in a lease and the rent has not been apportioned, the mortgagee is not given power to convey the head term. Where this is desired a special power of attorney (Form No. 11, p. 75, *supra*) should be used. Objection was taken to Lord Cranworth's Act, that it went too far in this respect, in enabling a lessee and his mortgagee to divide a term, without a proper apportionment having been made with the consent of the lessor; for the proper practice is to sell by sub-demise and then, when the last sale is effected, to convey the head term subject to the underleases.

(*v*) This instrument will be a security for such an amount as the stamp duty at 1*s.* per £100 will extend to cover, see generally notes to Prec. I, *supra*.

(hereinafter called the Bank), of the other part, WITNESSETH as follows :—

Declaration as to purpose of deposit.

1. THE Borrower has this day deposited with the Bank the documents mentioned in the Schedule hereto, with intent to create an equitable mortgage upon all property comprised therein, or to which the same relate, for securing the payment to the Bank on demand of all money and liabilities which now are or at any time hereafter may be due, owing or incurred from or by the Borrower to the Bank or for which the Borrower may be or become liable to the Bank on any current loan or other account, or in any manner whatever (whether alone or jointly with any other person and in whatever name, style or firm), together with interest to date of repayment, commission, banking charges, law and other costs, charges and expenses (such interest being computed both before and after any such demand according to the usual mode of the Bank with current accounts) and that notwithstanding any account intended to be hereby secured, may from any cause cease to be carried on as an ordinary banking account, and so that interest shall be payable at the rate so provided, as well after as before any judgment obtained hereunder:

PROVIDED that if no demand is made during the lifetime of the Borrower the said money and liabilities shall (without any demand) become payable on his death, and shall be discharged by his personal representatives accordingly.

Charge.

2. THE Borrower hereby charges the said property with the payment of interest on the balance owing at the date of such demand as aforesaid or from the date of his death (whichever shall first happen) at the rate of £— per cent. per annum.

Agreement to execute legal mortgage.

3. THE Borrower or the persons deriving title under him shall at his or their cost execute a legal mortgage of the said property to the Bank for securing payment of the said balance and interest whenever requested so to do, such mortgage to contain such covenants and provisions generally as the Bank may reasonably require, and in particular the mortgage shall authorise the exercise of the statutory power of sale without notice [and without any such demand as aforesaid].

Limit.

4. PROVIDED that the charge and undertaking hereinbefore contained shall be available only for a principal sum not exceeding £—— (in addition to any commission, interest and costs, and any money advanced for the purposes mentioned in subsection (3) of section eighty-eight of the Stamp Act, 1891) but so that the limit hereby imposed shall not apply to or

prejudice the full enforcement of any liability of the Borrower independently of this present Memorandum.

Additional security.

5. THE money hereby secured is in addition to the money secured by the mortgages and securities (if any) already made by the Borrower or by any surety for the Borrower in favour of the Bank.

[Power to deal with property until a legal mortgage is required.]

[6. (1) UNTIL the Bank shall require a legal mortgage to be executed or the Bank shall give notice in writing to the Borrower or the persons deriving title under him determining this present power it shall not be necessary on any dealing by the Borrower or the persons deriving title under him with the said property to produce or give notice of this Memorandum to any purchaser or other person dealing with the said property for money or money's worth:

(2) IN the meantime the Borrower or the persons deriving title under him may dispose of or deal with the said property or any part thereof to a purchaser or other person aforesaid in like manner as if the said documents had been delivered to the Bank for safe custody only:

(3) FOR giving effect to any such authorised sale or other transaction the Bank or their agents on their behalf shall from time to time, if so required, and at the cost of the Borrower or the persons deriving title under him, sign a letter stating that the Bank have no claim against the property so dealt with and a letter so signed shall operate to discharge such property from any claim in respect of the said deposit of documents or any charge hereby imposed.]

AS WITNESS, &c. (*Add Schedule.*)

No. V.

MEMORANDUM *of* DEPOSIT *of* MISCELLANEOUS SECURITIES *with a* BANKING COMPANY *to secure* BALANCE OF ACCOUNT CURRENT *and other money.* (*Equitable Interest.*)

THIS MEMORANDUM OF DEPOSIT, made, &c. (*as in last Precedent*):

Declaration as to purpose of deposit.

1. THE Borrower has this day deposited with the Bank the documents mentioned in the Schedule hereto, to the intent that the same and all the property, money and advantages comprised in, secured or represented by, and derivable under such documents, shall be a security for the payment to the Bank on demand, &c. (*as in last Precedent, to the end, and see notes to Prec. I*).

Part III.

FURTHER CHARGES, TRANSFERS, AND CONSOLIDATING MORTGAGES.

Section I.

FURTHER CHARGES.

No. I.

FURTHER CHARGE *on* Freeholds *or* Leaseholds.(*a*) (*Legal Estate.*)

THIS FURTHER CHARGE is made, &c., Between A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: Whereas:— Parties.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between the Borrower of the one part, and the Mortgagees of the other part (being a Mortgage of the fee simple of certain freehold property at ——, in the County of ——, now, by virtue of the Law of Property Act, 1925, converted into a Mortgage for a term of Mortgage. Freeholds.

(*a*) After notice of a second mortgage a first mortgagee could not before 1926 tack further advances to his security so as to take priority over the second mortgagee: *Hopkinson* v. *Rolt* (1865), 9 H. L. C. 514; 34 L. J. Ch. 468; and see *Hughes* v. *Britannia, &c., Socy.* [1906], 2 Ch. 607; 75 L. J. Ch. 739; *Deeley* v. *Lloyds Bank* [1912], A. C. 756; 81 L. J. Ch. 697. This formerly applied to further advances made by the first mortgagee under a covenant in his mortgage deed: *West* v. *Williams* [1899], 1 Ch. 132; 68 L. J. Ch. 127; this is overruled by L. P. Act, 1925, s. 94 (1) (*c*). Under this section further advances will rank in front of a subsequent mortgage if the prior mortgagee makes an arrangement to that effect with the subsequent mortgagees, or he does not have notice of the subsequent mortgage, when the further advance is made, or whether or not he has notice, his mortgage imposes an obligation to make the advance. Sub-s. (2) only applies where the original mortgage was made for securing further advances; thus in the case in the text the mortgagees must obtain an official certificate of search at the Land Registry for puisne mortgages (*ib.*, s. 198) and in the local deeds register (*ib.*, s. 197), if any, before the further advance is made; for *ex hypothesi* the original mortgage was not made for securing further advances, nor is there any obligation to make an advance. Where a further charge is made it is expedient to endorse a note of that fact on the principal security. Further advances by first mortgagee where there is a second mortgagee. Searches. Endorsement.

3,000 years for securing the principal sum of £—— and interest thereon at the rate of £— per cent. per annum), *or*
(being a Charge by way of Legal Mortgage of certain freehold property at ——, for securing, *as above*), *or*
(being a Mortgage by demise for a term of —— years of certain freehold property at ——, for securing, *as above*), *or*

Leaseholds.

(being a Mortgage by Assignment of certain property at ——, held under a Lease dated, &c., for a term of —— years, from the —— 19—, at a yearly rent of £—, which Mortgage has now by virtue of the Law of Property Act, 1925, been converted into a Mortgage by sub-demise, for securing, *as above*), *or*
(being a Mortgage by sub-demise for a term less by —— days than the term created by the Lease hereinafter mentioned, of certain property at ——, held under a Lease dated, &c., for a term of —— years, from the —— 19—, at a yearly rent of £—, for securing, *as above*), *or*
(being a Charge by way of Legal Mortgage of certain property at ——, held under a Lease dated, &c., for a term of —— years, from the —— 19—, at a yearly rent of £—, for securing, *as above*) :

State of mortgage debt.

(2) The said principal sum of £——, with the current half-yearly interest thereon, is still owing to the Mortgagees upon the security of the Principal Deed :

Agreement for further advance.

(3) (*Form No.* 2A, *p.* 71, *saying* "the further sum of £——") : NOW, in pursuance of the said agreement and in consideration of the sum of £—— (*the further advance*), now paid by the Mortgagees to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :—

Covenant to pay further advance and interest.

1. THE Borrower hereby covenants with the Mortgagees as follows—

(1) To pay to them on the —— next (*the next half-yearly day fixed by the Mortgage for payment of interest*), with interest thereon from the date hereof, at the rate of £— per cent. per annum (*or otherwise as in Form No.* 4, *p.* 72), AND ALSO so long as any principal money remains due hereunder after the said —— next, to pay to the Mortgagees interest thereon at the rate aforesaid by equal half-yearly payments on the —— of ——, and the —— of —— in every year :

Consolidation.

(2) THAT the premises affected by the Principal Deed shall not be redeemed except upon payment of the said sum of £—— (*the further advance*), and the interest thereon hereinbefore

covenanted to be paid, as well as the said sum of £—— (*original advance*) and the interest thereon secured by the Principal Deed:

(3) That all the covenants and provisions contained in the Principal Deed shall apply and have effect for securing the payment of the principal money and interest hereby covenanted to be paid in the same manner as if the whole principal money secured by the Principal Deed and this further charge (making the aggregate sum of £——) and the interest thereon had been originally secured by the Principal Deed [and so that the provision for reduction of the rate of interest contained in the Principal Deed, and the provision therein contained restricting the right of calling in or paying off the principal money, shall apply to and include the principal money and interest hereby secured(*b*)]: Covenants in Principal Mortgage to apply.

(4) That (*Add Form No.* 45, *p.* 102, *where the Principal Deed was made before* 1925).

2. THE Borrower, As Beneficial Owner, hereby Charges by way of legal mortgage all the premises affected by the Principal Deed with the payment of the principal money and interest hereinbefore covenanted to be paid. Legal Charge.

IN WITNESS, &c.

No. Ia.

FURTHER CHARGE, *where at the time of the further advance the title to the land is registered.*(*c*)

Adapt Prec. VII in Sec. I, Group A, p. 113, *adding at the head of the special provisions*, "The Charge, No.——, registered on the—— of ——, 19—, against [*or*, The Mortgage dated the —— of ——, 19—, registered [*or* noted] as an incumbrance having priority to] the title above referred to, which Charge [Mortgage] is hereinafter referred to as the Principal Charge [Mortgage], shall not be discharged except upon payment of the money secured by this Charge as well as the money secured by the Principal Charge [Mortgage], and all the covenants and provisions express or implied in the Principal Charge [Mortgage] shall apply to this Charge as if the whole principal money secured by the Principal Charge [Mortgage] and this Charge (making Consolidation.

(*b*) The words within square brackets will only be used when applicable.

(*c*) See notes to Form No. 45 in the L. R. R., 1925; also preliminary note to mortgages, *supra*. A mortgage of registered land can be taken in almost any form. A mortgage off the register under L. R. Act, 1925, s. 106, is not recommended.

As to charges for securing further advances: L. R. Act, 1925, s. 30.

together the aggregate sum of £——) and the interest thereon had been originally secured by the Principal Charge [Mortgage] [and—*if appropriate*—so that the provision therein contained restricting the right of calling in or paying off the principal money shall apply to and include the principel money hereby secured.]

[*Also, if required, add,* "The Borrower, As Beneficial Owner, hereby charges, by way of legal mortgage, the land affected by the Principal Charge [Mortgage] with the payment of the principal money and interest secured by this Charge."]

[*If the principal security was made before* 1926, *add,* "The powers conferred by the Law of Property Act, 1925, in regard to mortgages" [*if the principal security is a registered charge add,* "and the powers conferred by the Land Registration Act, 1925, in regard to charges"] "shall extend and apply to the Principal Charge [Mortgage] in like manner as if that Charge [Mortgage] had been executed [or completed by registration] after 1925."(*d*)]

SIGNED, SEALED, &c.

No. II.

FURTHER CHARGE *of* FREEHOLDS *or* LEASEHOLDS *where there have been several* PRIOR FURTHER CHARGES. (*Legal Estate.*)(*e*)

Supplemental to Mortgage and Further Charges in Schedule.

THIS FURTHER CHARGE is made, &c. (*Parties and definitions as in Prec. I, supra*): WHEREAS:—

(1) This Deed is supplemental to the Mortgage (hereinafter called the Principal Deed) and Further Charges mentioned in the Schedule hereto (which Principal Deed and Further Charges are hereinafter referred to as the Scheduled Deeds):

Money remains due.

(2) The aggregate principal sum of £——, with the current interest thereon, is still owing to the Mortgagees on the security of the Scheduled Deeds:

(*d*) On registration apply to the registrar to note the consolidation against both charges and the enlargement of powers as respects the principal charge. For this purpose the charge certificate of the original charge as well as the land certificate will be required. If the principal security was made before first registration and the land is registered with possessory or qualified title, see that the prior incumbrance is expressly registered under r. 160 or noted against the title. In the latter case endorse a note of the consolidation and enlargement of powers on the prior deed. The title thereto and to the right of redemption, down to the date of first registration, may have to be proved to the registrar to enable the consolidation to be effectively noted.

(*e*) For registered land adapt Prec. No. 1A, *supra*, adding particulars of all the charges and call them "the Principal Charges."

(3) (*Form No.* 2A, *p.* 71, *saying* "further sum"): NOW, &c. (*continue as in Prec. I, but saying in Clause* 1 (2) *after* "*covenanted to be paid*" as well as the said aggregate sum of £—— and the interest thereon, secured by the Scheduled Deeds, *and in Clause* 1 (3) *refer to* "the Scheduled Deeds" *in place of* "the Principal Deed" *where that expression is used a second time*). Agreement for further advance.

IN WITNESS, &c.(*f*)

THE SCHEDULE.

——19— By a Mortgage of this date (in this deed called the Principal Deed), made between, &c. (being,—*describe the Mortgage as in the recital in Prec. I according to its nature*).

——19— By a Further Charge of this date, made between, &c., the premises affected by the Principal Deed were charged with the payment of a further sum of £—— and interest thereon at the rate aforesaid.

——19— By a Further Charge, &c. (*as last above*).

No. III.

FURTHER CHARGE *on* ENFRANCHISED LAND. VARIATIONS *where a* COMPENSATION AGREEMENT, *or* NOTICE *to ascertain the* COMPENSATION *has or has not been made or served, or where a terminable* RENTCHARGE *has been* RESERVED *by the* AGREEMENT.(*g*) (*Legal Estate.*)

THIS FURTHER CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and Parties.

(*f*) See notes to Prec. No. I, *supra*.

(*g*) See the notes to Prec. No. I, p. 263, as to the priority of further advances and the official certificates of search to be made before the money is advanced, unless there is an obligation to make the advance, or the original mortgage was made for securing further advances.

If the manorial incidents have not been extinguished either by a Compensation Agreement or by Notice to ascertain the compensation, the deed must be produced to the steward of the manor within six months for endorsement, and all fines, &c., and arrears thereof must be paid or tendered, otherwise the charge will not operate as a legal charge. Production to steward.

Generally, a mortgagee, when he makes an advance or a further advance, will stipulate that the manorial incidents shall be extinguished out of part of the advance, so that the land may for all purposes be treated as freehold. It will also be considered whether it is expedient to arrange with the lord for the acquisition of his mining and sporting rights by means of the compensation Mortgagee's requirements as to extinguishment of manorial incidents.

C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Mortgage of copyholds.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed), dated, &c., and made between the Borrower of the one part and the Mortgagees of the other part, whereby the Borrower covenanted with the Mortgagees that the Borrower would surrender to the lord of the Manor of ——, in the County of ——, certain property known as——, then copyhold of the said Manor, To the use of the Mortgagees and their heirs according to the custom of the said Manor, subject to the usual proviso for making void the said surrender on payment (on a date since passed) by the Borrower to the Mortgagees of the sum of £—— with interest thereon at the rate of £— per cent. per annum:

No conditional surrender.

(2) No surrender was ever made pursuant to the recited covenant:

[Where a conditional surrender.]

[*Or* (2) On the —— day of —— the Borrower out of court surrendered the said property into the hands of the lord of the said Manor by the hands and acceptance of his steward according to the custom of the said Manor, To the use of the Mortgagees and their heirs at the will of the lord according to the said custom and by and under the rents, fines, suits and services therefor due and of right accustomed, but subject to a condition for making void such surrender if the Borrower should (on a date since passed) pay to the Mortgagees the said sum of £——, with interest thereon at the rate aforesaid:]

[Where an admission pursuant to the conditional surrender.]

[(2A) On the —— day of —— the Mortgagees were duly admitted to the said property pursuant to the recited Surrender, To Hold to them and their heirs by copy of court roll, at the will of the lord, according to the said custom by and under the rents, fines, suits and services therefor due and of right accustomed (*h*):]

Statutory vesting.

(3) By virtue of the Law of Property Acts, 1922, 1924 and 1925,

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agreement. Or whether the owner of the enfranchised land should, as part of the compensation, grant to the lord any mining rights he may have, with or without surface rights, or any facilities in reference to the lord's sporting rights.

Registered land.

For registered land use Prec. IA, *supra*. See that the manorial incidents or compensation rentcharge are entered as incumbrances in the charges register.

Fines, &c.

(*h*) The existence of an admission is only material for the purpose of ascertaining what fines, &c., are payable when the further charge is taken to the steward for endorsement, the mortgagees will take a term if only a covenant to surrender has been given.

the said property became vested in the Mortgagees for a term of 3,000 years without impeachment for waste, subject to cesser on redemption under the Principal Deed, and subject to the said term in the Borrower for an estate in fee simple in possession subject to the manorial incidents and the rights of the lord reserved by the said Act of 1922 :

(4) (*Recite the Compensation Agreement, if any, showing whether a gross sum was paid for compensation or a terminable rentcharge reserved ; also whether the lord's right to minerals and sporting rights were acquired or the Borrower with the Mortgagees granted any rights to the lord as part of the compensation ; also the receipt endorsed for compensation money paid in a gross sum, and for arrears of fines, &c. Or recite the notice served to ascertain the compensation ; or that no compensation agreement has been made or notice served, as the case requires*) :

State of mortgage debt.

(5) The said principal sum of £——, with the current half-yearly interest thereon, is still due to the Mortgagees upon the security aforesaid :

Agreement for further advance.

(6) (*Form No.* 2A, *p.* 71, *saying* "further sum") :

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows :—

Covenant to pay principal and interest.

1. (1) (*Forms Nos.* 4 *and* 6, *pp.* 72, 73, *the consideration being the sum of* £—— *and the day for payment of that sum being the next half-yearly day fixed by the Mortgage for payment of interest*) :

Consolidation.

(2) AND FURTHER, that the property comprised in the Principal Deed shall not be redeemed except upon payment of the said sum of £—— (*further advance*), and the interest thereon hereinbefore covenanted to be paid, as well as the said sum of £—— (*original advance*), and the interest thereon, secured by the Principal Deed :

(3) THAT (*Covenants in Principal Mortgage to apply as in Prec. I of this Section*) :

(4) THAT (*Add Form No.* 45, *p* 102, *as the Principal Deed was made before* 1925).

Conversion into legal charge.

2. THE Mortgagees hereby declare that the Principal Deed (as varied by the said Acts) is hereby converted into a charge by way of legal mortgage.

Legal charge.

3. THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage, ALL the premises affected by the Principal Deed with the payment of the principal money and interest hereinbefore covenanted to be paid. (*Add* "but subject to," *refer to the manorial incidents and lord's rights if they have not*

been extinguished or acquired, or to the compensation rentcharge if one has been created. The charge by a person as Beneficial Owner operates to give an indemnity against the rentcharge : L. P. Act, 1925, *2nd Sch., Pt. IV.*)

IN WITNESS, &c.

No. IV.

FURTHER CHARGE *on* FREEHOLDS *where a* SECOND MORTGAGEE CONCURS *to* POSTPONE *his* SECURITY. (*Legal Estate.*)

Parties. THIS FURTHER CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D., of, &c. (hereinafter called the Second Mortgagee), of the 2nd part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the First Mortgagees), of the 3rd part : WHEREAS :—

First Mortgage. (1) (*Recite First Mortgage, as in Prec. I of this Section, p.* 265, *calling it the Principal Deed, and saying* "First Mortgagees" *instead of* "Mortgagees") :

Second Mortgage. (2) By a Mortgage (hereinafter called the Second Mortgage), dated, &c., and made between the Borrower of the one part, and the Second Mortgagee of the other part, the Borrower conveyed the said property (subject to the Principal Deed and to the principal money and interest thereby secured) to the Second Mortgagee in fee simple by way of mortgage for securing the payment to the Second Mortgagee of the principal sum of £—— with interest thereon as therein mentioned :

Vesting of Mortgage terms. (3) By virtue of the Law of Property Act, 1925, the said property became vested in the First Mortgagees for a term of 3,000 years without impeachment of waste, subject to cesser on payment of the principal money and interest secured by the Principal Deed and subject thereto in the Second Mortgagee for a term one day longer than the term vested in the First Mortgagees, subject to cesser on payment of the principal money and interest secured by the Second Mortgage and subject to the said mortgage terms in the Borrower for an estate in fee simple in possession :

Registration of land charge. (4) The Second Mortgagee has registered a Land Charge in respect of the Second Mortgage and accordingly has the benefit of a legal security :

Agreement for further advance. (5) (*Agreement for further advance of* £—— *by First Mortgagee ; adapt Form No.* 2A, *p.* 71) :

(6) The Second Mortgagee has, at the request of the Borrower, agreed to join in this Deed for the purpose of postponing the Second Mortgage to the security hereby made : Second Mortgagee to postpone his security.

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows :—

1 and 2. (*As in Prec. I of this Section, p.* 265, *to the end, and add the following clause*) : Covenant to pay principal and interest and charge.

3. (1) THE Second Mortgagee, at the request of the Borrower, hereby agrees that the property comprised in the Principal Deed shall stand charged with the payment of the two sums of £—— and £—— and the interest thereon thereby and by this Deed respectively secured in priority to the principal sum of £—— and the interest thereon secured by the Second Mortgage, and in like manner as if the Principal Deed had been originally executed for securing the aggregate sum of £—— and interest : Grant of priority by Second Mortgagee.

(2) THE Second Mortgagee, in exercise of the power conferred on him by section eighty-seven of the Law of Property Act, 1925, hereby declares that the Second Mortgage is hereby converted into a charge by way of legal mortgage :(*i*)

(3) THE Second Mortgagee hereby irrevocably appoints the First Mortgagees and the persons deriving title under them jointly and severally in his name or otherwise to consent to the cancellation of the recited Land Charge in any of the following events, namely : if the First Mortgagees or the persons deriving title under them—

(i) sell under their statutory powers of sale as respects the land so sold ;

(ii) acquire the fee simple in the land comprised in the Principal Deed or any part thereof by foreclosure as respects the land so acquired ;

(iii) acquire the fee simple in the land comprised in the Principal Deed or any part thereof under the Limitation Acts or otherwise free from any right of redemption as respects the land so acquired.

4. (*Add acknowledgment by Second Mortgagee of the right of the First Mortgagees to production of the Second Mortgage.*)

IN WITNESS, &c.

(*i*) This conversion into a legal charge renders it unnecessary to consider whether or not the second mortgagee should surrender his mortgage term and take a new charge. The powers conferred by s. 87 only apply where the mortgage was made before 1926. As to postponement of charges, see L. P. Act, 1925, s. 113, whether or not notice of a trust has been given. Postponement.

No. IVA.

FURTHER CHARGE *of registered land where a* SECOND MORTGAGEE *concurs to postpone his security.*

(A) *Where both the original security and the second charge were created after First Registration* :

Adapt Prec. IA, *supra, adding at the end,* "And I, G. H., of, &c. (hereinafter called the Second Mortgagee), hereby agree that the property comprised in the principal security shall stand charged with the aggregate money thereby and by the above charge secured in priority to the Charge, No. ——, dated the —— of ——, 19—, and registered the —— of ——, 19—, of which I am the proprietor, in like manner as if the principal security had been originally executed for securing the said aggregate money :

And we, the Second Mortgagee, the Borrower, and the First Mortgagees, hereby apply to the Registrar to note this postponement on the register as to all the charges and incumbrances affected by it.

(*The Charge must be executed by the Second Mortgagee on registration*; *apply to note the postponement accordingly : for this the Charge Certificate must be produced.*)

(B) *Where the original security was created before, and the second charge after, First Registration* :

Adapt Prec. IA, *supra, adding at the head of the Special Stipulations,* "The Mortgage dated the —— of ——, 19—, and registered [*or* noted] as an incumbrance before the date of first registration, of which mortgage the First Mortgagees are the registered proprietors [*or*, to which the First Mortgagees are now entitled] and which mortgage is hereinafter referred to as the 'principal security' shall not be discharged," *&c., as in Prec. No.* IA, *and adding at the end* "and I, G. H., of, &c." *continue as above* (A).

(C) *Where both the original security and the second mortgage were created before First Registration* :

As in (B) *and* (A) *above, but substituting in the final postponement clause* (*in* (A)) *for* "the charge No. —, &c." *to* "the proprietor" *the words* "the Mortgage dated the —— of ——, 19—, of which I am the proprietor" [*or*, "which is noted as an incumbrance prior to First Registration"].

(*In cases* (B) *and* (C), *see that the prior incumbrances are in fact registered or noted as stated.*)

No. V.

FURTHER CHARGE *on a* LIFE INTEREST *and* POLICY *and* ASSIGNMENT *of a* FURTHER POLICY.(*j*) (*Equitable Interest.*)

THIS FURTHER CHARGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part : WHEREAS :— Parties.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., being a mortgage of the life interest of the Borrower in the C. Estate, in the County of G., and of his life interest in certain investments and of certain policies of assurance on the life of the Borrower for securing payment to the Mortgagees of the sum of £—— and interest thereon at the rate of £— per cent. per annum : Supplemental to Mortgage.

(2) The said sum of £—— secured by the Principal Deed, with the current half-year's interest thereon, is still due : State of mortgage debt.

(3) The Borrower has effected the further policy of assurance on his life hereinafter mentioned and assigned : Another policy.

(4) (*Form No.* 2B, *p.* 71) : Agreement for advance and further security.

NOW, in pursuance of the said agreement and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH and it is hereby agreed as follows :—

1. (1) THE Borrower (*covenant, Forms Nos.* 4 *and* 6, *pp.* 72, 73, *to pay the further sum of* £—— *and interest on next half-yearly day and interest half-yearly on the same days as in the Principal Deed, and adding the following sub-clause*) : Covenant for payment of the further advance and interest.

(2) THAT the property, annual income, policies, and money respectively demised and assigned by the Principal Deed shall stand charged with and shall not be redeemed except upon payment of the said sum of £—— and the interest thereon hereinbefore covenanted to be paid, as well as the said sum of £—— and the interest thereon secured by the Principal Deed : And Further Charge.

(3) THAT (*Add Form No.* 45, *p.* 102, *if the Principal Deed was made before* 1926).

(*j*) New notice in writing as to the original policies should be given as well as notice of the assignment of the new policy to the insurance society. Also notice in writing should be given to the S. L. Act trustees of the trust instrument creating the life interest : L. P. Act, 1925, s. 137, and see notes to preceding Precedents in Group B as to notices, p. 223 *et seq.* New notices in writing.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagees :

Assignment of new policy.

ALL THAT policy of assurance effected in the name and on the life of the Borrower for the sum of £—— with the —— Insurance Company dated, &c., and numbered, &c., and at the annual premium of £——, and the said sum of £—— and all other money to become payable thereunder and the full benefit thereof,

TO HAVE AND RECEIVE the same unto the Mortgagees, subject to the like right of redemption as immediately after the execution of this Deed and under the Principal Deed and this Deed will be subsisting with respect to the said property, annual income, policies and money respectively demised and assigned by the Principal Deed.

Covenants in Principal Deed to apply.

3. THE Borrower hereby covenants with the Mortgagees that all the covenants and provisions contained in the Principal Deed shall apply and have effect with respect to the policy hereby assigned, and also for securing the payment of the principal money and interest hereby covenanted to be paid, in the same manner as if the whole principal money secured by the Principal Deed and this Deed, making together the sum of £—— and the interest thereon, had been originally secured by the Principal Deed, and as if the policy hereby assigned had been thereby assigned for securing the payment of the said aggregate sum of £—— and the interest thereon, and as if the said aggregate sum and all the said policies had been actually mentioned and included in the covenants and provisions contained in the Principal Deed.

[Provisions for reduction of interest and term of advance to apply.]

[4. THE provision for reduction of the rate of interest contained in the Principal Deed and the provision therein contained restricting the right of calling in or paying off the principal money shall apply to and include the principal money and interest hereby secured in like manner as if the aggregate principal sum of £—— had been originally secured by the Principal Deed and the covenants and provisions of that Deed had applied to the policy hereby assigned in the manner in which the same are so applied by the covenant of the Borrower hereinbefore contained.(*k*)]

IN WITNESS, &c.

(*k*) This clause will only be used when applicable.

SECTION II.

TRANSFERS OF MORTGAGES.

No. I.

TRANSFER (*l*) *of a* MORTGAGE *of* FREEHOLDS *without the* CONCURRENCE *of the* BORROWER. VARIATIONS *where there has been an* INTERMEDIATE TRANSFER *or a* FURTHER CHARGE. (*Legal Estate.*)

THIS TRANSFER OF MORTGAGE is made, &c.,(*m*) BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Transferors), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS :— Parties.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between R. S. (hereinafter called the Borrower) of the one part, and the Transferors [*or* O. and P. (hereinafter called the Original Mortgagees)] of the other part, whereby certain freehold property known as the —— Estate, in the county of ——, was conveyed to the Transferors [*or* the Original Mortgagees] in fee simple by way of mortgage for securing payment to them [on a joint account (*n*)] of the principal sum of £——, with interest thereon at the rate of £— per cent. per annum [reducible on punctual payment to £— per cent. per annum]: Mortgage.

[*Or where the Mortgage is made after* 1925—This Deed is supplemental to a legal charge (hereinafter called the Principal Deed)

(*l*) Unless L. P. Act, 1925, s. 95, applies, a mortgagee cannot usually transfer the mortgage with safety at the request of the Mortgagor if he has notice of any puisne incumbrance without communicating with the incumbrancer: *Re Magneta Time Co.*, 84 L. J. Ch. 814; see also as to handing over deeds on a discharge: L. P. Act, 1925, s. 96 (2), and Chap. V. p. 19. If any question arises whether a mortgage can be properly transferred a receipt should be endorsed under s. 115, which will in a proper case operate as a transfer. Forms of transfers are regulated by L. P. Act, 1925, s. 114, this is applicable to mortgages of property generally, not merely to mortgages of land; for the form, see *ib.*, 3rd Sch., Form No. 1. As to transfers of registered charges, see next Precedent and notes thereto. As to transfers of statutory mortgages or charges on land: L. P. Act, 1925, ss. 117–118, 4th Sch., Forms Nos. 2–4. Transfers of Mortgages.

(*m*) Notice of this transfer must be given to the mortgagor: L. P. Act, 1925, s. 136. The stamp will be 6*d. ad valorem* duty for every £100 or part of £100 transferred. Notice; Stamps.

This and the following Precedents can readily be adapted to transfers of other classes of mortgages. As to registered land, see next Precedent.

(*n*) These words are only inserted where one of the mortgagees has died, in which case his death should be recited, and see L. P. Act, 1925, s. 111. Joint account.

dated, &c., and made, &c. (*as above*), whereby certain freehold property known as the —— estate in the county of —— was charged by way of legal mortgage with the payment to the transferors [*or* the Original Mortgagees] of the principal sum of £—— with interest, &c. (*as above*).]

[Statutory Vesting.]

[(1A) or (3A) *Where the Mortgage is made before* 1925 *add the following recital in the appropriate place*—By virtue of the Law of Property Act, 1925, the property comprised in the Principal Deed became vested in the Transferors [*or* the Original Mortgagees] for a term of 3,000 years without impeachment of waste subject to cesser on redemption under the Principal Deed [and the recited Further Charge] [and subject thereto in the Borrower for an estate in fee simple] :]

[Variation where there has been a Transfer.]

[(2) By a Transfer dated, &c., and made between the Original Mortgagees of the one part and the Transferors of the other part, the said mortgage debt of £——, with the interest thereon, was assigned to the Transferors absolutely, and the freehold property comprised in the Principal Deed was conveyed To the Use of the Transferors in fee simple, subject to the right of redemption subsisting therein under the Principal Deed, *or where the transfer is made after* 1925—By a Transfer dated, &c., and made, &c. (*as above*), the Original Mortgagees conveyed and transferred to the Transferors the benefit of the Principal Deed :]

[Variation where there has been a Further Charge.]

[(3) This Deed is also supplemental to a Further Charge dated, &c., and made between the Borrower (*o*) of the one part, and the Transferors of the other part, whereby the Borrower charged the property comprised in the Principal Deed with the payment to the Transferors of the further sum of £—— (making with the said sum of £—— (*the original debt*) the aggregate principal sum of £——), with interest thereon at the rate aforesaid :]

State of mortgage debt.

(4) The said [aggregate] principal sum of £—— still remains owing to the Transferors upon the security of the Principal Deed [and the recited Further Charge], with interest thereon from the —— day of —— last :(*p*)

[Variation where mortgagees have paid mineral rights duty.]

[(5) The Transferors in the year 19— paid the sum of £—— in respect of mineral rights duty and the costs of paying the same attributable to the property comprised in the Principal

Interest on a mortgage debt in the case of a transfer.

(*o*) If this recital is used, see that the mortgagor is defined as the borrower in the recital of the mortgage.

(*p*) As the mortgagor does not concur there will probably be interest, accruing or accrued, to be transferred. *Ad valorem* duty must be paid on

Deed and accordingly the said sum of £—— (*amount of duty and costs*) as well as the said sum of £—— (*amount secured by mortgage*) making the aggregate sum of £—— with interest thereon from the —— day of —— remains owing on the security of the Principal Deed (*q*) :]

(6) The Mortgagees have agreed out of money belonging to them on a joint account to pay to the Transferors the sum of £—— upon having such transfer of the said [aggregate] principal sum of £—— and interest and the securities for the same as hereinafter appearing : Agreement for transfer.

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Transferors (the receipt of which sum the Transferors hereby acknowledge), THIS DEED WITNESSETH that the Transferors as Mortgagees hereby convey and transfer to the Mortgagees the benefit of the Principal Deed [and the recited Further Charge (*r*)] [and the recited Charge attributable to the payment of mineral rights duty and costs as aforesaid]. Transfer of debt and securities.

IN WITNESS, &c.(*s*)

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interest in arrear, but not on interest which has not accrued due at the date of the transfer : Alpe, 18th ed., 201.

Where the mortgagor concurs, interest in arrear at the date of the mortgage can be added to the principal by the transferee : *Agnew* v. *King* [1902], 1 Ir. R. 471.

Where a mortgage is transferred without the concurrence of the mortgagor, the mortgagee takes subject to the state of account between the transferor and the mortgagor : *Dixon* v. *Winch* [1900], 1 Ch., at p. 742 ; 69 L. J. Ch. 465 ; *Turner* v. *Smith* [1901], 1 Ch. 213 ; 70 L. J. Ch. 144. In practice an arrangement is often made between the transferor and the mortgagee, under which the mortgagee pays the interest down to the date of the transfer to the transferor, and the transferor gives him a separate receipt and an authority to receive and, if necessary, to apply in the name of the transferor for the interest accrued down to the date of the transfer.

The mortgagee cannot add the costs of transfer to the security if the mortgagor does not join : *Re Radcliffe* (1856), 22 Beav. 201. The trustee of a term, which has been mortgaged, can charge the costs of obtaining a transfer on the settled property : *Sewell* v. *Bishopp* (1893), 62 L. J. Ch. 985. Costs of transfer.

(*q*) See Fin. (1909-10) Act, 1910, s. 39 (4) ; with the exception of mineral rights duty, duties on land values no longer exist : Fin. Act, 1923.

(*r*) The intermediate transfer (if any) should not be referred to here ; it does not affect the amount of the debt, &c., to be transferred.

(*s*) In simple cases the statutory form should be used, which is as follows :—

This Transfer of Mortgage made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part : Supplemental to a Mortgage [Legal Charge] dated, &c., and made between, &c. [and to a Further Charge dated, &c.], and Statutory form of Transfer.

No. Ia.

TRANSFER *of a* CHARGE *where the title is registered under the* LAND REGISTRATION ACT, 1925.(*t*)

H. M. Land Registry.

Land Registration Act, 1925.

District ——
Title No. ——
Property ——

(*Date*) IN consideration of ——, I, A. B., of, &c., hereby, As Mortgagee, transfer to C. D., of, &c., the Charge dated (*date*) and registered (*date*), of which I am the proprietor. [*If part only of the money secured is transferred, the words*—as to the sum of —— pounds (£——) *may apparently be added though it would be more correct to transfer the charge to the two jointly and have a separate declaration of trust.*]

Signed, Sealed and Delivered by the said A. B. in the presence of E. F., of, &c. } (Signature of A. B.) (Seal)

This Precedent can be adapted to a transfer of an incumbrance created before the date of first registration.

[NOTE.—If part only of the mortgage debt is transferred the entire charge will be registered jointly in the names of the proprietors, but the register may show (either directly or by reference to documents) in what shares the debt is held.(*u*)]

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made between, &c., affecting, &c. (*here state short particulars of the mortgaged property*) :

WITNESSETH, that in consideration of the sum[s] of £—— [and £—— for interest], now paid by the Mortgagee to the Transferor, being the [respective] amount[s] of the mortgage money [and interest] owing in respect of the said Mortgage [and Further Charge] (the receipt of which sum[s] the Transferor hereby acknowledges), the Transferor, As Mortgagee, hereby conveys and transfers to the Mortgagee the benefit of the said Mortgage [and Further Charge].

IN WITNESS, &c.

Registered land.

(*t*) Transfers of charges affecting registered land are governed by L. R. Act, 1925, s. 33; L. R. R., 1925, Form 54. A transferee for value when registered is not affected by any invalidity in the original charge of which he did not have notice. Any mortgage term will vest, without express assignment and notwithstanding anything to the contrary in the transfer, in the proprietor of the charge.

Implied joint account.

(*u*) Under L. R. Act, 1925, s. 32, where a charge is registered in more than

No. II.

TRANSFER *of a* MORTGAGE (*v*) *on the* APPOINTMENT *of* NEW *or* ADDITIONAL TRUSTEES, *the trust not being disclosed.* (*Legal Estate.*)

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c., C. D., of, &c., and D. B., of, &c. (hereinafter called the Transferors), of the one part, and the said C. D. and X., of, &c., and Y., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:— Parties.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made, &c., being a mortgage of the fee simple of freehold property at, &c., for securing payment to the Transferors of the sum of £——, with interest thereon :(*w*) Mortgage.

(2) By virtue of the Law of Property Act, 1925, the said property became vested in the Transferors for a term of 3,000 years without impeachment of waste, subject to cesser on redemption under the Principal Deed [and subject to the said term in the Borrower[s] in fee simple] : Vesting provisions.

(3) The said sum of £——, with the current interest thereon, is still due on the security of the Principal Deed, and now belongs to the Mortgagees on a joint account :(*x*) Money belongs to the Mortgagees.

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one name, whether jointly or in undivided shares, any mortgage term will vest in the proprietors as joint tenants. They and the survivor of them and the personal representatives of the survivor have power to give valid receipts notwithstanding that the mortgage money is held in undivided shares, as if there had been a joint account.

(*v*) *I.e.*, an investment made by the trustees of a settlement or Will. This Precedent can be readily adapted to the case of leaseholds. For registered land Prec. No. IA will apply.

(*w*) The mortgage will not have disclosed any trust because it was taken *after* the creation of the trust. Moreover trusts do not affect the title to the land : L. P. Act, 1925, s. 113. Trusts

(*x*) This recital enables the trusts to be kept off the title : *Re Harman, &c., Ry. Co.* (1883), 24 Ch. D. 720 ; 52 L. J. Ch. 808 ; *Carritt* v. *Real, &c., Advance Co.* (1889), 42 Ch. D., at p. 272 ; 58 L. J. Ch. 688 ; see also Dart, 7th ed., 336. But where the trust is accidentally disclosed to a purchaser : L. P. Act, 1925, s. 113, removes the difficulties which, see *Re Blaiberg and Abrahams* [1899], 2 Ch. 340 ; 68 L. J. Ch. 578, formerly arose. The stamp will not exceed 10*s.*, but it must be adjudicated if the *ad valorem* stamp would exceed that sum ; L. P. Act, 1925, s. 112, does not do away with the need for adjudication. A purchaser will, though not affected by notice of the trusts, insist on adjudication, for only by investigating the trust could it be proved that a 10*s.* stamp was sufficient. Stamp. Notice of trusts.

Transfer. NOW, in consideration of the premises, THIS DEED WITNESSETH that the Transferors, As Mortgagees, hereby convey and transfer to the Mortgagees the benefit of the Principal Deed.

IN WITNESS, &c. (*y*)

No. III.

TRANSFER *of a* MORTGAGE, *made in consideration of a Marriage, of* FREEHOLDS, ENFRANCHISED LAND *and* LEASEHOLDS, *the Mortgage Debt being held on the* TRUSTS *of the* SETTLEMENT *of even date.* (*Legal Estate.*)

See PRECEDENTS IN SETTLEMENTS (PERSONAL), Vol. III.

No. IV.

TRANSFER *of the* MORTGAGE *referred to in the last* PRECEDENT *on the appointment of a* NEW TRUSTEE *of the* MORTGAGE DEBT, *the* TRUSTS *of the* SETTLEMENT *being kept off the title.* (*Legal Estate.*)

See PRECEDENTS OF APPOINTMENTS OF NEW TRUSTEES, Vol. III.

No. V.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *where there have been several* FURTHER CHARGES *and* TRANSFERS (*z*), *the* BORROWER *not* CONCURRING. (*Legal Estate.*)

Parties. THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Transferors), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Mortgage. (1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c. (*continue as in Prec. No.* 1,

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Conveyance to self. (*y*) Under L. P. Act, 1925, s. 72, property and things in action may be conveyed by a person to himself jointly with another person, and land may be conveyed or vested by the grantor to or in himself.

Covenants with self and others. Under L. P. Act, 1925, s. 82, a covenant or agreement, express or implied (including the statutory covenants for title), by a person with himself and another or others will be construed and may be enforced as if made with the other person or persons alone, hence the old common form relating to covenants for title when a mortgage was transferred to one of the transferors and others is no longer required.

(*z*) A Precedent in this form may be found useful where there have been many further charges and transfers. For registered land Prec. No. IA will apply.

defining the Mortgagor as the Borrower *and the Original Mortgagees as* the Original Mortgagees) :

(2) By the several Further Charges mentioned in the First Schedule hereto the Borrower charged the property comprised in the Principal Deed with the payment of the further sums mentioned in that Schedule (making with the said principal sum of £—— the aggregate principal sum of £——), with interest thereon at the rate aforesaid : Effect of Further Charges in first Schedule.

(3) Under the several Transfers mentioned in the Second Schedule hereto the said aggregate principal sum of £——, with the interest thereon, is now vested in the Transferors absolutely and immediately before the date of the commencement of the Law of Property Act, 1925, the property comprised in the Principal Deed was vested in the Transferors in fee simple, subject to the right of redemption subsisting under the Principal Deed and the said Further Charges on payment of the said aggregate principal sum and the interest thereon : Effect of Transfers in second Schedule.

(4) By virtue of the Law of Property Act, 1925, the said property became vested in the Transferors for a term of 3,000 years without impeachment of waste, subject to cesser on redemption as aforesaid [and subject to the said term (and to any subsequent incumbrances which may have been created by the Borrower) in the Borrower for an estate in fee simple] : Vesting provisions.

(5) (*As in Recital* (4), *Prec. I of this Section, but refer to* " the said Further Charges ") : State of mortgage debt.

(6) The Mortgagees have agreed to pay to the Transferors the sum of £—— upon having such transfer of the said aggregate principal sum of £—— and interest and the securities for the same as hereinafter appearing : Agreement for transfer.

NOW, in pursuance of the said agreement and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH that the Transferors, As Mortgagees, hereby convey and transfer to the Mortgagees the benefit of the Principal Deed and the Further Charges mentioned in the First Schedule hereto. Transfer.

IN WITNESS, &c.

THE FIRST SCHEDULE.

Particulars of Further Charges.

Date of Further Charge.	Parties.	Amount Charged.

THE SECOND SCHEDULE.

Particulars of Transfers.

Date.	Names of Transferors.	Names of Transferees.

No. VI.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where the* BORROWER *joins.*(*a*) (*Legal Estate.*)

Parties. THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN C. D., of, &c., and R. D., of, &c. (hereinafter called the Transferors), of the 1st part, A. B., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part: WHEREAS:—

Mortgage. (1) This Deed is supplemental, &c. (*as in Form No.* 1A, p. 68, *referring to the Mortgagor as* "the Borrower"):

[*Add recital as to the effect of the vesting provisions where applicable, see preceding Precedents.*]

State of mortgage debt. (2) The said principal sum of £—— remains owing to the Transferors upon the security of the Principal Deed, but all interest thereon has been paid up to the date hereof:(*b*)

Agreement to transfer. (3) The Mortgagee, at the request of the Borrower, has agreed to pay to the Transferors the sum of £—— upon having such transfer of the said mortgage debt and interest and the securities for the same as hereinafter appearing:

New covenant to pay. (*a*) A new covenant from the mortgagor with the transferee for payment of the mortgage money and interest is unnecessary, because the benefit of the existing covenant passes to the transferee at law under L. P. Act, 1925, s. 136. But if the right of redemption has devolved on some other person since the mortgage, a new covenant from the owner of it is desirable, see next Precedent. In many cases a new covenant is given as a matter of course. Where there is a consolidation the new covenant to pay will be placed immediately after the transfer of the debt, see Consolidating Mortgages, *infra*.

Registered land. For registered land adapt Prec. No. IA, *supra*, inserting after "As Mortgagee" the words "at the request of——, the Borrower, directing As Beneficial Owner," and after "am the proprietor" the words "and on which the principal sum of £—— remains owing but all interest thereon has been paid up to the date hereof."

Interest paid up to date. (*b*) As the borrower joins, it can and should be arranged that the interest shall be paid up to date.

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee, at the request of the Borrower, to the Transferors (the receipt and payment of which sum the Transferors and the Borrower hereby respectively acknowledge), THIS DEED WITNESSETH as follows :— Transfer.

1. THE Transferors, As Mortgagees, by the direction of the Borrower directing As Beneficial Owner hereby convey and transfer to the Mortgagee the benefit of the Principal Deed.

2. (*Add, where the Borrower has not encumbered his right of redemption, any special clauses which may be required for extending the provisions of the mortgage.*)

3. (*Also add Form No.* 45, *p.* 102, *if the mortgage was made before* 1926.)

IN WITNESS, &c.

No. VII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where the* RIGHT *of* REDEMPTION *has passed to some other person who joins.*(*c*) (*Legal Estate.*)

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN C. D., of, &c. (hereinafter called the Transferor), of the 1st part, A. B., of, &c. (*person entitled to right of redemption*) (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Mortgagee), of the 3rd part : WHEREAS :— Parties.

(1) This Deed is supplemental to, &c. (*as in Form No.* 1A, *p.* 68, *but not defining the original Mortgagor as the Borrower*) :

(2) (*Recite the Conveyance, or Probate and Assent, &c., under which the right of redemption became vested in the Borrower*) : Vesting provisions.

(3) By virtue of the Law of Property Act, 1925, the said property became vested in the Transferor for a term of 3,000 years without impeachment of waste, subject to cesser on redemption under the Principal Deed, and subject to that term and the principal money and interest secured by the Principal Deed in the Borrower for an estate in fee simple free from any other incumbrance :

(4) The said principal sum, &c. (*continue as in last Precedent to the end of clause* 1, *and then add*) :

2. THE Borrower hereby covenants with the Mortgagee to pay the said principal sum of £—— on the —— day of —— next, Covenant by owner of right of

(*c*) See notes to last Precedent. For registered land Prec. No. 1A will apply ; the new covenant to pay can be added at the end.

redemption to pay principal money and interest.

with interest thereon from the date hereof at the rate mentioned in the Principal Deed; And also, so long after the said —— day of —— next as any principal money remains due under the Principal Deed or this Deed, to pay interest thereon at the rate aforesaid upon the half-yearly days fixed for payment thereof by the Principal Deed.

3. (*Add, where the Borrower has not encumbered his right of redemption, any special clauses which may be required for extending the provisions of the mortgage.*)

4. (*Also add Form No.* 45, *p.* 102, *if the mortgage was made before* 1926.)

IN WITNESS, &c.

No. VIII.

TRANSFER *of a* MORTGAGE *and* FURTHER CHARGE *by the* PERSONAL REPRESENTATIVES *of the survivor of deceased* MORTGAGEES, *the* BORROWER *not* CONCURRING. (*Legal Estate.*)

Parties.

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Transferors), of the one part, and R. M., of, &c. (hereinafter called the Mortgagee), of the other part: WHEREAS:—

Mortgage and further charge.

(1) This Deed is supplemental: FIRST, to a Mortgage dated, &c., and made between E. F. (hereinafter called the Borrower), of the one part, and G. H. and K. L. (hereinafter called the Original Mortgagees), of the other part, whereby certain freehold property at, &c., was conveyed to the use of the Original Mortgagees in fee simple by way of mortgage for securing payment to them on a joint account of the sum of £——, with interest thereon at the rate of £—— per cent. per annum, and SECONDLY, to a Further Charge dated, &c., and made between the same parties and in the same order, for securing payment to the Original Mortgagees on a joint account of the further sum of £——, with interest thereon at the rate aforesaid, on the same property:

Death of Mortgagees, and representation to survivor.(*d*)

(2) The said G. H. died, &c., and the said K. L. died, &c., having by his Will dated, &c., appointed the Transferors to be his executors who duly proved the said Will on the, &c., at the

Devolution of mortgage estates.

(*d*) As to the devolution of mortgage estates, see Ad. of E. Act, 1925, ss. 1 and 3, which take the place of C. Act, 1881, s. 30, as respects deaths occurring after 1925; s. 30 is repealed, as to deaths after 1925, by L. P. Act, 1925, 7th Sch.

—— Probate Registry [*or if the last Mortgagee died intestate say*— died, &c., intestate and on, &c., Letters of Administration were granted to the Transferors in respect of his estate by the —— Probate Registry]:

Vesting provisions.

(3) By virtue of the Law of Property Act, 1925, the said property became vested in the Transferors for a term of 3,000 years without impeachment of waste, subject to cesser on redemption under the said Mortgage and Further Charge, [and subject thereto and to subsequent incumbrances (if any) in the Borrower for an estate in fee simple]:

Principal and current interest due.

(4) The said principal sums of £—— and £—— are due to the Transferors as such personal representatives as aforesaid on the before-mentioned securities, with interest thereon from the —— day of —— last :(*e*)

Agreement for transfer.

(5) The Mortgagee has agreed to pay to the Transferors the said sums of £—— and £——, and also the sum of £—— for the interest thereon from the said —— day of —— last (making together the total sum of £——) upon having such transfer of the said principal sums of £—— and £—— and interest, and the securities for the same as hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the sum of £—— [*the total sum*] now paid by the Mortgagee to the Transferors (the receipt of which sum the Transferors hereby acknowledge), THIS DEED WITNESSETH that the Transferors, As Personal Representatives of the said K. L., deceased, hereby convey and transfer to the Mortgagee the benefit of the said Mortgage and Further Charge.

Transfer.

IN WITNESS, &c.

No. IX.

TRANSFER *of* MORTGAGE *by the* PERSONAL REPRESENTATIVES (*f*) *of the* SURVIVOR *of* DECEASED MORTGAGEES *where the* BORROWER *joins.* (*Legal Estate.*)

Parties.

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN C. D., of, &c., and R. T., of, &c. (hereinafter called the Transferors), of the 1st part, E. F., of, &c. (hereinafter called

(*e*) See note to Prec. I of this section, *supra*. For registered land, see Prec. No. IA; the personal representatives should be registered before transferring. They will only transfer "As Personal Representatives," &c.

(*f*) See notes to last Precedent. For registered land Prec. No. IA can be adapted.

the Borrower), of the 2nd part, and G. H., of, &c., and F. R., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

(1)—(3) (*Recite as in last Precedent, omitting in the third recital the reference to subsequent incumbrances*):

State of mortgage debt.

(4) The principal sums of £—— and £—— secured by the said Mortgage and Further Charge still remain owing, but all interest thereon has been paid up to the date hereof:

Agreement for transfer.

(5) The Mortgagees have agreed, at the request of the Borrower, to pay the aggregate sum of £—— to the Transferors upon having such transfer of the aggregate mortgage debt and the securities for the same as hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the sum of £——, now paid by the Mortgagees at the request of the Borrower, to the Transferors (the receipt and payment of which sum the Transferors and the Borrower hereby respectively acknowledge), THIS DEED WITNESSETH as follows:—

Transfer.

1. THE Transferors, As Personal Representatives of the said K. L., deceased, by the direction of the Borrower, directing as Beneficial Owner, hereby convey and transfer to the Mortgagees the benefit of the said Mortgage and Further Charge.

Covenant to pay.

2. (*Add if there has been any devolution of the right of redemption, covenant by Borrower to pay, see Prec. No. VII, clause 2, supra.*)

3. (*Add Form No. 45, p. 102, if the Mortgage was made before 1926, and any other special clauses required.*)

IN WITNESS, &c.

No. X.

TRANSFER OF MORTGAGE *of* ENFRANCHISED LAND *where the* BORROWER *does not concur.*(*g*) (*Legal Estate.*)

Parties

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. T., of, &c., and B. T., of, &c. (hereinafter called the Transferors), of the one part, and R. M., of, &c., and S. M., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Production to steward.

(*g*) If the manorial incidents have not been extinguished by a compensation agreement or notice to ascertain the compensation, the transfer must be produced to the steward for endorsement within six months and all fines and fees, including arrears, must be paid: L. P. Act, 1922, s. 129.

Registered land.

In the case of registered land the transferee should apply to register the mortgage under L. R. R., 1925, r. 160; a certificate from the steward may be required by the registrar as to fines, &c.: L. P. Act, 1922, s. 129 (6).

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between A. B. (hereinafter called the Borrower), of the one part, and the Transferors of the other part, Whereby certain properties at —— (then copyhold of the Manor of —— in the County of ——), were covenanted to be surrendered by the Borrower, To the use of the Transferors and their heirs, Subject to a condition for making void such surrender on payment by the Borrower to the Transferors of the sum of £—— with interest thereon at the rate of £— per cent. per annum : Mortgage of copyholds.

[*Recite the Conditional Surrender if taken and the Admission, if any. It is immaterial for the purpose of the vesting provisions whether or not any surrender was made or admission taken, the Transferors will obtain a mortgage term, though if the Transferors were admitted this may reduce the amount of fines payable*] :

(2) By virtue of the Law of Property Acts, 1922 and 1925, the said property became (subject to the manorial incidents saved by the said Act of 1922, and to the lord's mineral and sporting rights reserved by that Act) vested in the Transferors for a term of 3,000 years without impeachment of waste subject to cesser on redemption under the Principal Deed [and subject to the said term [and to any subsequent incumbrances created by the Borrower] in the Borrower for an estate in fee simple] : Vesting provisions.

(3) No compensation agreement has been made, nor has any notice to ascertain the amount of the compensation for the extinguishment of manorial incidents been served : Manorial incidents not extinguished.

(4) The said principal sum of £—— still remains owing to the Transferors on the security of the Principal Deed with interest thereon from the —— day of —— last : State of mortgage debt.

(5) The Mortgagees have agreed out of money belonging to them on a joint account to pay to the Transferors the sum of £—— upon having such transfer of the said principal sum of £—— and interest and the securities for the same as hereinafter appearing : Agreement for transfer.

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH that the Transferors As Mortgagees, hereby convey and transfer to the Mortgagees the benefit of the Principal Deed [and other recited securities].

[*Had the Borrower joined, Form No.* 11A. *p.* 76. *would have been added, and see next Precedent.*]

IN WITNESS, &c.

No. XI.

TRANSFER OF MORTGAGE *of* ENFRANCHISED LAND, *where a* RENTCHARGE *has been reserved by the* COMPENSATION AGREEMENT (*h*) *and the* BORROWER *joins.* (*Legal Estate.*)

Parties. THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. T., of, &c., and B. T., of, &c. (hereinafter called the Transferors), of the 1st part, A. B., of, &c. (hereinafter called the Borrower), of the 2nd part, and R. M., of, &c., and S. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

(1) and (2) (*Recite as in last Precedent, omitting the reference to subsequent incumbrances*):

Compensation agreement. (3) (*Recite the compensation agreement between the lord of the manor, the Transferors and the Borrower, showing whether or not the mineral and sporting rights of the lord have been acquired and setting out the reservation of a terminable compensation rentcharge*):

Receipt for fines, &c. (4) (*Recite the receipt for fines, &c., including arrears which become payable when a compensation agreement is made or notice to ascertain the compensation is served. Though fines, &c., are barred after six years: L. P. Act*, 1922, *s.* 130 (5), *time does not begin to run till they are payable, i.e., on the execution of the Compensation Agreement or on service of the notice. A fine might attach without the lord having notice of the event giving rise to the claim*):

State of mortgage debt. (5) (*As in recital* (4) *of last Precedent, save that interest must be paid up to date*):

Agreement to transfer. (6) The Mortgagees have agreed at the request of the Borrower to pay to the Transferors the sum of £—— upon having (*continue as in recital* (5) *of last Precedent*):

NOW, in pursuance, &c., and in consideration of the sum of £—— now paid by the Mortgagees at the request of the Borrower to the Transferors (the receipt and payment of which sum the Transferors and the Borrower hereby respectively acknowledge), THIS DEED WITNESSETH as follows:—

Transfer. 1. THE Transferors, As Mortgagees, by the direction of the Borrower, directing As Beneficial Owner, hereby convey and

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(*h*) Where the manorial incidents have been extinguished by a compensation agreement or by notice, the obligation to produce the transfer to the steward ceases. As a rule mortgagees will insist on the compensation being paid in a gross sum and will, if necessary, make a further advance for this purpose.

transfer to the Mortgagees the benefit of the Principal Deed and other securities aforesaid, but subject to the compensation rentcharge hereinbefore mentioned.

Covenant to pay.

2. (*Add covenant to pay if the Borrower is not the original Mortgagor as in clause* 2 *of Prec. No. VII, supra.*)

Indemnity against rentcharge, and power to redeem.

3. (1) THE Borrower hereby covenants with the Mortgagees to pay the said compensation rentcharge and to keep them and the persons deriving title under them effectually indemnified against all costs, claims and demands in respect thereof:

(2) THE Borrower hereby irrevocably appoints the Mortgagees and the persons deriving title under them, or their substitutes jointly and severally, to be his attorneys in his name or otherwise to redeem the said rentcharge and for that purpose to exercise all the powers which are conferred by section one hundred and thirty-nine of the Law of Property Act, 1922, and section one hundred and ninety-one of the Law of Property Act, 1925, or either of those sections:

(3) THE redemption money and all costs and expenses incurred by the Mortgagees or the persons deriving title under them in redeeming the said rentcharge shall be added to the principal money secured by the Principal Deed and shall carry interest at the rate aforesaid from the date of expenditure.

Legal Charge.

4. THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage, ALL the property comprised in the Principal Deed or which may now be subject to redemption thereunder with the payment to the Mortgagees of the redemption money, costs and expenses aforesaid (as and when expended) and all other principal money which the Borrower has in the Principal Deed or in this Deed covenanted to pay, with interest thereon at the rate aforesaid, such interest or the proper proportion thereof to be paid on the half-yearly days fixed for payment of interest.

5. (*Add Form No.* 45, *p.* 102.)

IN WITNESS, &c.(*i*)

Power for Mortgagee to effect extinguishment.

(*i*) For a power of attorney for a mortgagee to effect an extinguishment of manorial incidents before the statutory power of sale has become exercisable, see Form No. 11A, p. 76, *supra*. As a rule a mortgagee will insist on the incidents being extinguished at the time the loan is made and, if necessary, will advance sufficient money for this purpose, but in some cases the advance may be required before this can be done. For an implied covenant to pay the rentcharge: L. P. Act, 1925, 2nd Sch. Pt. IV. If the land is registered it is assumed that the rentcharge will be entered as an incumbrance. Prec. No. IA, *supra*, can be adapted.

No. XII.

TRANSFER *of a* MORTGAGE *of* LEASEHOLDS *by* SUB-DEMISE *or* LEGAL CHARGE. (*Legal Estate.*)

Parties. THIS TRANSFER OF MORTGAGE is made, &c. (*Parties and definitions as in Prec. I, p. 277, if the Borrower does not join, or as in Prec. VI, p. 284, if the Borrower joins*) : WHEREAS :—

Mortgage. (1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., whereby the Borrower demised (*continue as in Form No.* 1A, *p.* 68) :

Legal Charge. [*or* (1) This Deed is supplemental to a Legal Charge (hereinafter called the Principal Deed) dated, &c., whereby the Borrower charged, by way of legal mortgage, the property known as ——, comprised in a Lease dated, &c., being a lease for a term of —— years, from the —— day of ——, 19—, at a yearly rent of £——, with the payment to the Transferors of the principal sum of £—— and interest thereon, at the rate of £— per cent. per annum (*j*)] :

(2) (*Recital of state of mortgage debt and agreement for transfer, as in Prec. I, or VI, pp.* 278–9 *or* 284) :

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows :—

Transfer. 1. THE Transferors, As Mortgagees [by the direction of the Borrower directing, As Beneficial Owner], hereby convey and transfer to the Mortgagees the benefit of the Principal Deed [*add if part only of the property is charged*—including the right to exercise the said power of attorney and any other provisions relating to the assignment or acquisition of the term created by the said Lease].

[2. *If the Mortgage relates to part only of the property demised, but does not contain an irrevocable power of attorney to assign or acquire the term created by the Lease, and the Mortgagor joins, add Form No.* 11, *p.* 75, *supra.*]

Variation if the mortgage or charge only includes part of the property.

(*j*) If the mortgage or legal charge only includes part of the property comprised in the lease add :—

"And the Principal Deed contained an irrevocable power of attorney for the Transferor and the persons deriving title under them to assign or acquire the term created by the said Lease as therein mentioned."

For registered land Prec. No. IA can be adapted.

[3. *Also add, if the Mortgagor joins, Form No.* 45, *p.* 102, *if the Mortgage was made before* 1926, *and any other special clauses required.*]

IN WITNESS, &c.

No. XIII.

TRANSFER *of a* MORTGAGE (*formerly by assignment*) *of a* LONG TERM *with the* CONCURRENCE *of the* BORROWER. (*Legal Estate.*)

Parties.

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c., and S. B., of, &c. (hereinafter called the Transferors), of the 1st part, C. D., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. M., of, &c., and G. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

Mortgage for raising portions.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., whereby (after recitals whereby it appeared that under a Deed dated, &c. (hereinafter called the Settlement) a term of 1,000 years from the —— day of ——, without impeachment of waste, in the freehold property in the County of —— thereby settled, was then vested in the parties to the Principal Deed of the first part (hereinafter called the Trustees) upon trusts for raising immediately the sum of £8,000 for certain portions and for raising further portions at a future date as therein mentioned, and that the Borrower was entitled to the fee simple of the property comprised in the said term, and had paid the sum of £2,000 in part discharge of the said sum of £8,000, leaving a balance of £6,000 unpaid and immediately raisable), in consideration of £6,000 paid by the Transferors to the Trustees, they assigned all the said freehold property comprised in the Settlement (except advowsons) unto the Transferors for the residue of the said term of 1,000 years by way of mortgage for securing payment to the Transferors of the said sum of £6,000 and interest thereon at the rate of £— per cent. per annum:

Raising of further money.

(2) The residue of the money raisable under the trusts of the said term (*k*) was raised by a Second Mortgage dated, &c., in

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(*k*) After the execution of a vesting deed all legal portion terms subsisting on 1st January, 1926, and limited by the settlement, take effect as equitable interests: S. L. Act, 1925, 2nd Sch., para. 1 (6). In the case in the text the

Conversion of portion terms into equities.

favour of —— (hereinafter called the Second Mortgagees), by an assignment of the right of redemption in the said term, and no other money (whether for costs, duties, or otherwise) remains to be raised under the trusts of the said term :

Vesting of mortgaged property.

(3) By virtue of the Law of Property Act, 1925, First Schedule, the property comprised in the Principal Deed became vested in the Transferors for a term less by ten days than the term assigned by the Principal Deed, subject to cesser on redemption under the Principal Deed, and subject thereto in the Second Mortgagees for a term one day longer than the mortgage term vested in the Transferors and the head term of 1,000 years created by the Settlement, became vested in the Borrower and merged in the fee simple, the Trustees having no claim to any right of redemption :(*l*)

State of mortgage debt.

(4) The said sum of £6,000 now remains owing to the Transferors of the aforesaid security, but all interest thereon has been paid up to the date hereof as they hereby acknowledge :

Title to right of redemption.

(5) The Borrower remains absolutely entitled to the fee simple in possession of the premises comprised in the Principal Deed, subject to the mortgage terms aforesaid respectively vested in the Transferors and the Second Mortgagees, and the

Agreement for transfer.

Mortgagees, at the request of the Borrower, have agreed to pay to the Transferors the sum of £6,000 upon having such transfer of the said mortgage debt of £6,000 and interest and the securities for the same as is hereinafter contained :

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows :—

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term had been disposed of for value and had become paramount to the settlement before the Act. It is immaterial whether or not the head term became an equitable term, for legal sub-terms were previously created by L. P. Act, 1925, 1st Sch., Pt. VIII, and vested in the mortgagees.

Successive terms taken by Mortgagees.

(*l*) The original mortgage is a mortgage of leasehold lands, as it was made by the portion trustees, hence is within L. P. Act, 1925, 1st Sch., Pt. VIII, para. 1. The first mortgagees take a term, less ten days, under para. 1, while the second mortgagees take a legal term for one day longer under para. 2. Had the trustees of the term any claim for costs or otherwise which would give them a right of redemption the head term would have vested in them under para. 3 instead of the borrower under Pt. II, para. 2, as the owner of the fee simple. The second mortgagees cannot take advantage of their interest being converted into a legal term till they register a land charge : *ib.*, Pt. VIII, para. 5.

Registered land.

This Precedent applies if the mortgage was merely noted on the register ; but if the mortgagee's title was registered then Prec. No. Ia, *supra*, should be adapted.

1. THE Transferors, As Mortgagees, by the direction of the Borrower [directing, as Beneficial Owner], hereby convey and transfer to the Mortgagees the benefit of the Principal Deed, Together with the mortgage term created by statute as aforesaid. Transfer.

2. (*Add a covenant to pay principal and interest if the Borrower did not join for this purpose in the Principal Deed.*) Covenant.

[3. *Add covenant to insure, Form No.* 18, *p.* 81, *if required.*] Insurance.

4. (*Add acknowledgment and undertaking as to documents if any retained by the Borrower. The mortgage having originally been made by portion trustees no documents would then have been handed over, but now that the Mortgage ranks as a security on the fee simple the Mortgagees can insist on the proper documents being handed over. The Borrower has not created any incumbrances. Those subsisting were created in right of the portions term. L. P. Act,* 1925, *1st Sch., Pt. VIII, para.* 5, *does not deprive the first Mortgagees of their right to rank as legal mortgagees without registering a land charge, for the original term was a legal term. That paragraph only applies where an equitable mortgagee is given a legal term.*) Documents.

IN WITNESS, &c.

No. XIV.

TRANSFER *where* PART *of* MONEY *is advanced by a* NEW MORTGAGEE, *the aggregate debt and security being vested in* TRANSFEROR *and* MORTGAGEE *jointly.*(*m*) (*Legal Estate.*)

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the 1st part, C. D., of, &c. (hereinafter called the Mortgagee), of the 2nd part, and the Transferor and the Mortgagee (hereinafter together called the Trustees), of the 3rd part: WHEREAS:— Parties.

(1) (*Recite a mortgage or legal charge to the Transferor (calling* Mortgage.

(*m*) An assignment of part of a mortgage debt is not a desirable transaction; the intention of the parties can be better effected by means of a sub-mortgage. As to joint accounts, see L. P. Act, 1925, s. 111; notice of the trust will not be material in this case, the money is treated as being on a joint account, and see *ib.*, s. 113, which keeps the trust off the title to the land. As to registered land, see L. R. Act, 1925, s. 32; a simple transfer would be taken without disclosing the beneficial interests in the mortgage debt; these could be dealt with by a separate declaration of trust. Declaration of trust, and notice thereof. Registered land.

it the Principal Deed) for securing £2,000, *see Prec. I of this section, supra, with the effect of the vesting provisions if applicable*) :

State of mortgage debt.

(2) The said principal sum of £2,000 remains owing to the Transferor, but all interest thereon has been paid up to the date hereof :

Agreement for transfer.

(3) The Mortgagee has agreed to pay to the Transferor the sum of £500, upon the Transferor executing such transfer and declaration of trust as hereinafter appearing :

NOW, in pursuance of the said agreement and in consideration of the sum of £500 now paid by the Mortgagee to the Transferor (the receipt of which sum the Transferor hereby acknowledges), THIS DEED WITNESSETH as follows :—

Transfer.

1. THE Transferor, As Mortgagee, hereby conveys and transfers to the Trustees (*n*) the benefit of the Principal Deed.

Declaration of trust.

2. (1) THE Trustees and the persons deriving title under them shall so far as regards any purchaser, lessee, transferee or the mortgagor or other person interested in the right of redemption, hold the aggregate mortgage debt of £2,000 as if the same were money belonging to them on a joint account and may exercise all statutory powers, give receipts and do any act or thing accordingly :

(2) SUBJECT as aforesaid the Trustees shall stand possessed of the aggregate mortgage debt aforesaid and the interest to accrue thereon, IN TRUST as to £1,500 part thereof for the Transferor absolutely and as to £500 balance thereof for the Mortgagee absolutely and each of the said sums and the interest thereon shall rank equally without any priority between themselves and if necessary shall abate proportionately.

Mutual agreement to concur in calling in principal money at request of either party.

3. THE Transferor and Mortgagee hereby agree that if one of them or the persons deriving title under him shall request the other of them, or the persons deriving title under him, to concur with him or them in calling in the said principal sum of £2,000, or that part thereof to which the requesting persons shall be entitled, or in enforcing or obtaining payment thereof, or any interest due in respect thereof, either by exercising the statutory power of sale or otherwise, then, and in such case, the persons to whom such request shall be made shall comply with the same, on being indemnified by the persons so requesting against all costs and expenses consequent thereon.

IN WITNESS, &c.

(*n*) As to covenants with self and another : L. P. Act, 1925, s. 82.

No. XV.

TRANSFER *of* PART *of* MONEY *secured on a* CONTRIBUTORY MORTGAGE *where the* TRANSFEROR *is entitled under a* DECLARATION *of* TRUST *executed by the* MORTGAGEES. (*Equitable Interest.*)

THIS ASSIGNMENT made, &c., BETWEEN A. B., of, &c. (hereinafter called the Transferor), of the one part, and C. D., of, &c. (hereinafter called the Transferee), of the other part, supplemental to a Declaration of Trust dated, &c. (whereby R. M., S. M. and G. M. declared that they would stand possessed of a mortgage debt of £——, secured on property at ——, and the interest thereon, IN TRUST as to £—— part thereof and the interest thereon for the Transferor absolutely), WITNESSETH that in consideration of the sum of £—— now paid by the Transferee to the Transferor (the receipt, &c.), the Transferor, As Mortgagee, hereby assigns unto the Transferee,

Parties.

Declaration of trust.

Assignment of equity.

ALL THAT the principal sum of £—— to which the Transferor is entitled under the said Declaration of Trust and all interest henceforth to become due thereon and the full benefit of the said trust

TO HAVE AND RECEIVE the same unto the Transferee absolutely.

IN WITNESS, &c.(*o*)

No. XVI.

TRANSFER *of a* MORTGAGE *of a* LIFE INTEREST *in* LAND *and in* CAPITAL MONEY *and of* POLICIES *of* ASSURANCE, *the* BORROWER *not joining.*(*p*) (*Equitable Interest.*)

THIS TRANSFER OF MORTGAGE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Transferors), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:—

Parties.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between X. Y. (hereinafter called the Borrower), of the one part, and the Transferors of the other part, whereby the Borrower demised

Mortgage of life interest, before 1926.

(*o*) This deed merely passes an equitable thing in action; the legal interest in the whole mortgage debt is vested in the trustees nominated to act as mortgagees. Notice in writing of the assignment must be given to the mortgagees: L. P. Act, 1925, s. 137 (3)-(8).

Equitable thing in action.

(*p*) Notice of the transfer must be given to the mortgagor, to the S. L. Act trustees and also to the insurance companies: L. P. Act, 1925, ss. 136-137; Policies of Assurance Act, 1867. In the case of registered land a priority caution may be placed in the Minor Interests Index.

Notices.

certain freehold property known as the Z Estate to which he was entitled as tenant for life in possession under the Will dated the —— day of —— and proved on the —— day of —— of K. L., deceased, to the Transferors for the term of ninety-nine years from the date of the Principal Deed, if the Borrower should so long live, without impeachment of waste, And whereby the Borrower assigned to the Transferors absolutely: FIRST, the annual income to arise during the life of the Borrower from certain investments and money (standing in the joint names of M. and N. (hereinafter called the Trustees) being the trustees of the said Will for the purposes of the Settled Land Act, 1925) or from other the interim investments for the time being subject to the trusts of the said Will being or representing capital money primarily liable to be laid out in the purchase of freehold property to be made subject to the trusts of the said Will, And SECONDLY, certain policies of assurance effected in the name and on the life of the said X. Y., And as to all the premises thereby demised and assigned by way of mortgage for securing the payment by the said X. Y. to the Transferors of the principal sum of £—— with interest thereon at the rate of £—— per cent. per annum as therein mentioned:

Vesting deed.

(2) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Borrower of the other part, it was declared that the said freehold property was vested in the Borrower in fee simple on the trusts of the said Will and that the Trustees were the trustees of the Settlement for the purposes of the Settled Land Act, 1925:

State of mortgage debt.

(3) The said principal sum of £—— still remains owing to the Transferors upon the security of the Principal Deed with interest thereon from the —— day of —— last:

Agreement for transfer.

(4) The Mortgagees have agreed to pay to the Transferors the sum of £—— upon having such transfer of the said principal sum of £—— and interest and the securities for the same as hereinafter contained:

Transfer.

NOW, in pursuance of the said agreement and in consideration &c. (the receipt, &c.), THIS DEED WITNESSETH that the Transferors, As Mortgagees, hereby convey and transfer to the Mortgagees the benefit of the Principal Deed.

IN WITNESS, &c.(*q*)

Transfers generally.

(*q*) L. P. Act, 1925, s. 114, applies to transfers of mortgages of any class of property, save that it does not apply to the transfer of a bill of sale of chattels by way of security.

No. XVII.

TRANSFER *of a* SUB-MORTGAGE (MORTGAGE *of a mortgage debt*), *the* SUB-MORTGAGOR *not joining.*(*r*) (*Legal Estate.*)

THIS TRANSFER of Mortgage is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Transferors), of the one part, and E. F., of, &c., and G. H., of, &c. (hereinafter called the Mortgagees), of the other part: WHEREAS:— Parties.

(1) By a Deed (hereinafter called the Principal Mortgage) dated, &c., and made between X. Y., of the one part, and M. N., of the other part, certain freehold properties at —— were conveyed by the said X. Y. (who was then seised in fee simple), to the said M. N. in fee simple, subject to a proviso for the redemption of the said properties on payment by the said X. Y. to the said M. N., of the principal sum of £——, with interest thereon at the rate of £—— per cent. per annum on the —— day of —— then next: AND by virtue of the Law of Property Act, 1925, the said properties became vested in the said M. N. for a term of 3,000 years without impeachment of waste for securing the said principal money and interest [and subject thereto in the said X. Y. in fee simple]: Principal Mortgage (before 1926).

[(1) *Or where the Mortgage is made after* 1925—By a Legal Charge (hereinafter called the Principal Mortgage) dated, &c., and made between X. Y. of the one part and M. N. of the other part, the said X. Y. (being then seised in fee simple) charged by way of legal mortgage certain freehold properties at ——, with the payment of the said M. N., of the principal sum of £—— with interest thereon at the rate of £— per cent. per annum on the —— day of —— then ensuing:] (After 1925).

(2) This Deed is supplemental to a Deed (hereinafter called the Sub-mortgage) dated, &c., and made between the said M. N. of the one part, and the Transferors of the other part, whereby in consideration of the sum of £—— (*a sum smaller than the principal debt*) the said M. N. assigned the principal money and interest secured by the Principal Mortgage to the Transferors absolutely, and demised to them the properties comprised in the Principal Mortgage for the residue of the said term of 3,000 years less ten days (subject to the right of redemption under the Principal Mortgage), and as to all the premises The Sub-mortgage made after 1925.

(*r*) Notice in writing of the transfer must be given to the principal mortgagor and to the sub-mortgagor. Notice.

subject to redemption on payment of the sum of £—— (*the smaller sum*) with interest thereon at the rate of £—— per cent. per annum, on the —— day of —— then next:

[(2) *Or where the Principal Mortgage was made as a Legal Charge*—This Deed is Supplemental to a Deed (hereinafter called the Sub-mortgage), dated, &c., made between M. N., of the one part, and the Transferors of the other part, whereby in consideration of the sum of £—— (*smaller sum*) the said M. N., conveyed and transferred to the Transferors the benefit of the Principal Mortgage but subject to redemption by the said M. N. on payment of the sum of £—— (*smaller sum*), with interest thereon at the rate of £— per cent. per annum, on the —— day of —— then ensuing:]

State of mortgage debts.

(3) The said principal sum of £—— (*larger sum*) with the current half-year's interest thereon is still owing upon the security of the Principal Mortgage, and the said principal sum of £—— (*smaller sum*) is still owing to the Transferors upon the security of the Sub-mortgage with the current interest thereon:

Agreement for transfer.

(4) The Mortgagees have agreed to pay to the Transferors the sum of £—— (*smaller sum*) upon having such transfer of the said principal money and interest secured by the Sub-mortgage, and the securities for the same, as are hereinafter contained:

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH that the Transferors, As Mortgagors, hereby convey and transfer to the Mortgagees the benefit of the Sub-mortgage.

IN WITNESS, &c.(*s*)

No. XVIII.

TRANSFER *for keeping alive* PART *of a* MORTGAGE DEBT *paid off by a* TENANT FOR LIFE *and* RELEASE *of* PART *of the* SECURITY *for the benefit of the Settled Land.*(*t*) (*Legal Estate.*)

Parties.

THIS TRANSFER of Mortgage and Release is made, &c.,

Redemption of the principal mortgage when there has been a sub-mortgage.

Registered land.

Notice.

(*s*) When the principal mortgage is paid off the principal mortgage debt will be paid to the sub-mortgagees, who will thereout pay themselves off and account for the balance to the sub-mortgagor unless, as is usual, the latter joins in the surrender and receives the balance.

Notice in writing of the transfer must be given to the principal mortgagor and also to the sub-mortgagor.

If the sub-mortgage was registered a transfer in the prescribed form should be used. In other cases this Precedent will apply.

(*t*) See *Alderson* v. *Elgey* (1884), 26 Ch. D. 567; Also L. P. Act, 1925, s. 116, as to keeping alive a mortgage debt for the benefit of a tenant for life, and as to merger: *ib.*, s. 185, replacing Jud. Act, 1873, s. 25 (4).

BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Mortgagees), of the 1st part, E. F., of, &c. (hereinafter called the Tenant for Life), of the 2nd part, and G. H., of, &c., and K. L., of, &c. (hereinafter called the Trustees), of the 3rd part : WHEREAS :—

"Vesting Deed" and "Principal Deed."

(1)—(3) (*Recite Vesting Deed* (hereinafter called the Vesting Deed), *showing any necessary additional power of mortgaging, also refer to any deeds declaring who are the S. L. Act Trustees. Then make the deed supplemental to the Mortgage* (hereinafter called the Principal Deed), *and recite any transfers and the state of the mortgage debt showing that all interest has been paid up to date*) :

Payment of part of mortgage debt by Tenant for Life and of the balance out of capital money.

(4) The Tenant for Life has out of his own money on or before the execution hereof paid to the Mortgagees the sum of £—— towards satisfaction of the sum of £—— secured by the Principal Deed and the Trustees have by the direction of the Tenant for Life paid the sum of £—— (balance of the said mortgage debt) to the Mortgagees out of capital money in their hands properly applicable for that purpose :

Agreement to assign part of mortgage debt and to surrender part of security.

(5) Upon such payments being made as aforesaid it was agreed that the Mortgagees should assign the sum of £——, part of the said mortgage debt, to the Tenant for Life, together with the benefit of the security of the lands mentioned in the schedule hereto (hereinafter called the Scheduled property) and execute such surrender as is hereinafter contained of the remaining part of the property comprised in the Principal Deed :

NOW, in pursuance of the said agreement and in consideration of the said two sums of £—— and £——, so paid as aforesaid (the receipt of which sums the Mortgagees hereby acknowledge), THIS DEED WITNESSETH as follows :—

Assignment of part of mortgage debt to Tenant for Life to be kept alive.

1. THE Mortgagees, As Mortgagees, hereby assign unto the Tenant for Life,

ALL THAT the principal sum of £——, part of the principal sum of £—— originally secured by the Principal Deed (together with the benefit of the security of the Scheduled property) and all interest to become due thereon,

Habendum.

TO HAVE AND RECEIVE the same unto the Tenant for Life absolutely,(*u*) To the Intent that the said debt so assigned may

(*u*) Under the practice before the Jud. Act, 1873, the debt would have been transferred to a trustee. This gave rise to unnecessary costs ; the declaration is sufficient to keep the debt alive.

be kept alive for his benefit and be dealt with and disposed of by his personal representatives as part of his personal estate, but so that during his lifetime the Tenant for Life shall remain liable to keep down the interest (if any) on the principal money hereby assigned.

Transfer as respects property in schedule.

2. THE Mortgagees, As Mortgagees, so far only as regards the Scheduled property, and for the purpose only of securing the mortgage debt hereinbefore assigned, and the interest to become due thereon, hereby convey and transfer to the Tenant for Life the benefit of the Principal Deed for the limited purposes aforesaid [And to the intent that, as respects the Scheduled property, the mortgage term hereby conveyed shall not be extinguished in the fee simple (*v*)].

Surrender and release.

3. THE Mortgagees, As Mortgagees, hereby surrender and release unto the Tenant for Life as the estate owner trustee under the recited Vesting Deed:

ALL the premises comprised in the Principal Deed or which may by any means have become subject to the charge thereby created (other than the Scheduled property) discharged from all claims under the Principal Deed.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the property remaining as the security for the sum of £—— assigned to the Tenant for Life.

SECTION III.

CONSOLIDATING MORTGAGES.

No. I.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* FURTHER CHARGE *where no* ADDITIONAL PROPERTY *is added to the* SECURITY.(*a*) (*Legal Estate.*)

Parties.

THIS TRANSFER AND FURTHER CHARGE is made, &c., BETWEEN A. B., of, &c., and R. B., of, &c. (hereinafter called

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(*v*) The words in brackets should be omitted if no mortgage term is created by the mortgage or under L. P. Act, 1925, 1st Sch., Pt. VII.

Registered land.

In the case of a registered charge or mortgage the partial discharge should be noted and the transfer taken on the prescribed form.

Stamp.

(*a*) The stamp will be 6*d.* per £100 *ad valorem* duty on the amount transferred and 2*s.* 6*d.* per £100 *ad valorem* duty on the further advance: Stamp Act, 1891, s. 87 (3).

the Transferors), of the 1st part, C. D., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. M., of, &c., and F. M., of, &c. (hereinafter called the Mortgagees), of the 3rd part: WHEREAS:—

Mortgage.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c. (*continue recital of Mortgage for £——, as in Form No.* 1A, *p.* 68, *so far as the Form relates to freeholds with the necessary variations if the Mortgage was made after* 1925, *or if affected by the vesting provisions*):

State of mortgage debt.

(2) The said principal sum of £—— is still due to the Transferors upon the security of the Principal Deed, but all interest thereon has been paid up to the date hereof, as the Transferors hereby acknowledge:

Agreement for transfer and further advance.

(3) (*Form No.* 2C, *p.* 72):

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagees to the Transferors by the direction of the Borrower (the receipt of which sum the Transferors hereby acknowledge) and of the further sum of £—— now paid by the Mortgagees to the Borrower (the payment and receipt of which sums of £—— and £—— the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows:—

Transfer.

1. THE Transferors, As Mortgagees, by the direction of the Borrower [directing, As Beneficial Owner], hereby convey and transfer (*b*) to the Mortgagees the benefit of the Principal Deed.

Covenant to pay the aggregate debt and interest.

2. THE Borrower hereby covenants with the Mortgagees (*Covenant to pay the aggregate sum and interest, Forms Nos.* 4 *and* 6, *pp.* 72, 73, *saying in Form No.* 6—so long as any principal money remains due under the Principal Deed or this Charge).

Legal Charge of the aggregate sum.

3. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage:

ALL the premises comprised in or charged by the Principal Deed, with the payment to the Mortgagees of the principal money and interest hereby covenanted to be paid:

(*b*) The original debt is assigned in order to retain its priority.

The mortgagees (not having been in possession) are bound to assign the debt and transfer the mortgage by the direction of the mortgagor, but subject to the right of an incumbrancer requiring assignment and transfer: L. P. Act, 1925, s. 95. A mortgagee should not transfer, at the request of the mortgagor, without the consent of a puisne incumbrancer of whose charge he has notice: *Re Magneta Time Co.*, 84 L. J. Ch. 814. A tenant for life who has failed to keep down interest and obtained an order permitting him to redeem may not, under the terms, be entitled to the benefit of s. 95: *Alderson* v. *Elgey* (1884), 26 Ch. D. 567.

(2) THE legal right of redemption ceases on the —— next, and the statutory power of sale shall become exercisable from and after that date.

Covenants in Principal Deed to apply.

4. THE Borrower hereby covenants with the Mortgagees that all the covenants and provisions in the Principal Deed shall apply and have effect for securing the payment of the aggregate principal money and interest hereby covenanted to be paid in the same manner as if the same had been originally secured by the Principal Deed.

Provisions for reduction of interest and term of loan to apply.

5. THE provision for the reduction of the rate of interest contained in the Principal Deed, and the provision therein contained restricting the right of calling in and paying off the principal money, shall apply to and include the said further advance of £—— and the interest thereon in like manner as if the aggregate principal sum of £—— had been secured by the Principal Deed.(*c*)

L. P. Act made applicable.

[6. THE provisions of the Law of Property Act, 1925, shall apply to the Principal Deed and this Charge in like manner as if the Principal Deed had been executed after the commencement of that Act.]

7. (*Add other special clauses as required.*)(*d*)

IN WITNESS, &c.

No. Ia.

TRANSFER *of* MORTGAGE *of* REGISTERED LAND *and* FURTHER CHARGE *where no additional property is added to the security.*(*e*)

District ——
Title No. ——
Property ——
Charge No. ——

(*Date*) IN consideration of ——, I, A. B., of, &c., hereby transfer to C. D., of, &c., the charge dated ——, and registered ——, of which I am the proprietor ;

(*c*) This clause will only be added when applicable.

Additional clauses.

(*d*) In preparing a deed of this kind it should always be considered by the transferees whether the clauses in the mortgage are sufficient, *e.g.*, whether there are provisions as to registration: Form No. 17, p. 80. Such clauses, if necessary, can be added in the text. If the mortgagor has incumbered his right of redemption they can only take effect subject to the rights of the mesne incumbrancers.

(*e*) As to consolidation: L. R. Act, 1925, s. 25 (3) (ii); L. R. R., 1925, r. 164. If the original security is made before the date of first registration, and the mortgage has not been registered, Prec. No. I, *supra*, will apply with

AND in consideration of —— pounds (£——): I, X. Y., of, &c. (*the proprietor of the land*), hereby charge the land comprised in the title above referred to with the payment to the said C. D., on the —— (*next day for payment of interest*) of the further principal sum of £—— with interest at — per cent. per annum payable on the half-yearly days fixed by the Charge, No. —, above referred to:

AND IT IS HEREBY DECLARED as follows:—

1. THE Charge, No. —, shall not be redeemed except on payment of the principal money and interest hereby secured.

2. (*Adapt Clauses* 4, 5 *and* 6 *of last Precedent.*)

SIGNED, SEALED, &c.

No. II.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* FURTHER CHARGE *where* ADDITIONAL FREEHOLDS *are added to the* SECURITY. (*Legal Estate.*)

THIS TRANSFER AND FURTHER CHARGE is made, &c. (*continue as in Prec. No. I down to the end of the recital of the state of the mortgage debt*):

Seisin of additional property.

(3) The Borrower is solely seised of the property mentioned in the Schedule hereto for an estate in fee simple in possession free from incumbrances:

Agreement for transfer and further advance.

(4) The Mortgagees have agreed, at the request of the Borrower (*continue as in Prec. No. I*):

NOW, &c. (*as in Prec. No. I to the end of clause* 2).

Legal charge.

3. (1) THE Borrower, As Beneficial Owner, hereby charges, by way of legal mortgage,

FIRST, ALL the premises comprised in or charged by the Principal Deed,

AND SECONDLY, ALL AND SINGULAR the freehold property and rights mentioned in the Schedule hereto,

WITH the payment to the Mortgagees of the principal money and interest hereby covenanted to be paid:

(2) THE legal right of redemption ceases on the said —— next, and in favour of a purchaser the statutory power of sale shall become exercisable from and after that date.

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slight modifications, but it may be expedient to apply for registration of the security. Application should be made to the registrar to note the consolidation of the two mortgage debts.

Covenants in the Mortgage Deed to apply.

4. THE Borrower hereby covenants with the Mortgagees that all the covenants and provisions contained in the Principal Deed shall apply and have effect with respect to the property and rights mentioned in the Schedule hereto, and also for securing payment of the aggregate principal sum of £—— and the interest thereon hereby covenanted to be paid, in the same manner as if that sum had been originally secured by the Principal Deed and as if the said property had been included in the Principal Deed for securing the payment of that sum and the interest thereon, and as if that sum and all the property hereby charged had been actually mentioned and included in the covenants and provisions contained in the Principal Deed.

[Provisions for reduction of interest and term of advance to apply.]

[5. THE provision for reduction of the rate of interest contained in the Principal Deed, and also the provision contained therein restricting the right of calling in or paying off the principal money, shall apply to and include the principal money and interest hereby secured in like manner as if the said aggregate principal sum of £—— had been originally secured by the Principal Deed and the covenants and provisions of the Principal Deed had applied to the property hereby charged in the manner in which the same are so applied by the covenant of the Borrower hereinbefore contained.(*f*)]

6 and 7. (*As in Prec. No. I.*)

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the additional property hereby charged.

No. III.

TRANSFER *of* TWO MORTGAGE DEBTS *and the* SECURITIES *for* EACH, *and* CHARGE *of* ADDITIONAL PROPERTY *by* MORTGAGOR *to create a* CONSOLIDATED SECURITY *for both* DEBTS *and a* FURTHER ADVANCE. (*Legal Estate.*)

Parties.

THIS CONSOLIDATING MORTGAGE is (*g*) made, &c., BETWEEN C. D., of, &c. (*one Transferor*), of the 1st part, E. F.,

(*f*) This clause will only be used when applicable, and see notes to Prec. No. I. For registered land adapt Prec. No. Ia, but add the reference to the further land in the heading.

(*g*) Where there are many mortgage debts to be assigned the best way is for the mortgagee to take separate transfers, see next Precedent. Where a second or subsequent mortgagee pays off a first or prior mortgage he should take a transfer, for having the immediate right of redemption no transfer will be implied by a receipt under L. P. Act, 1925, s. 115.

Transfer to second mortgagee.

of, &c. (*other Transferor*), of the 2nd part, A. B., of, &c. (hereinafter called the Borrower), of the 3rd part, and G. M., of, &c., and H. M., of, &c. (hereinafter called the Mortgagees), of the 4th part: WHEREAS:—

Two Mortgages of separate properties.

(1) (*Recite Mortgage, defining it as* "the D Mortgage," *to C. D., of* "the property first hereinafter described," *to secure* £—— *and interest*):

(2) (*Recite Mortgage, defining it as* "the F Mortgage," *to E. F., of* "the property secondly hereinafter described," *to secure* £—— *and interest*):

[*If applicable, recite the effect of the vesting provisions.*]

Seisin of Borrower.

(3) The Borrower is seised in fee simple in possession of the properties first, secondly, and thirdly hereinafter described, subject as to the properties first and secondly hereinafter described to the D and F Mortgages respectively, but otherwise free from incumbrances:

Money remains owing on both Mortgages.

(4) The said sum of £—— remains owing to the said C. D. on the security of the D Mortgage, but all interest thereon has been paid up to the date of this Charge:

(5) The said sum of £—— remains owing to the said E. F. on the security of the F Mortgage, but all interest thereon has been paid up to the date of this Charge:

Agreement for transfers and further advance.

(6) The Mortgagees have agreed, at the request of the Borrower, to pay to the said C. D. the sum of £——, to the said E. F. the sum of £——, and to advance to the Borrower the further sum of £——, upon having transfers of the said respective mortgage debts of £—— and £——, and the securities for the same respectively, and upon having the repayment of the said sums of £——, £——, and £—— respectively (making together the aggregate sum of £——) and interest, secured in manner hereinafter appearing:

NOW, in pursuance of the said agreement and in consideration of the following sums now paid by the Mortgagees, namely, £—— to the said C. D. (the receipt, &c.); £—— to the said E. F. (the receipt, &c.); and the further sum of £—— to the Borrower (the payment and receipt of which three sums, making together the aggregate sum of £——, the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows:—

Transfer of the D Mortgage.

1. THE said C. D., As Mortgagee, by the direction of the Borrower directing as Beneficial Owner, hereby conveys and transfers to the Mortgagees the benefit of the D Mortgage.

The like of the F Mortgage.

2. THE said E. F., As Mortgagee, &c. (*as in last clause, referring to the F Mortgage*).

Covenant to pay principal and interest.

3. THE Borrower hereby covenants with the Mortgagee, &c. (*to pay aggregate principal sum of £—— and interest, Forms Nos.* 4 *and* 6, *pp.* 72, 73).

Legal charge.

4. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage,

FIRST, ALL the property described in the first part of the Schedule hereto and all other, if any, the premises comprised in or charged by the D Mortgage,

SECONDLY, ALL the property described in the second part of the said Schedule, and all other, if any, the premises comprised in or charged by the F Mortgage,

AND THIRDLY, ALL the property described in the third part of the Schedule hereto,

ALL of which properties are, for purposes only of identification and not of restriction, delineated on the plan hereto and thereon respectively edged pink, green and purple,

WITH the payment to the Mortgagees of the principal money, interest and other money hereby covenanted to be paid :

(2) THE legal right of redemption shall cease on the said —— next, and in favour of a purchaser the statutory power of sale shall become exercisable from and after that date :

(3) ANY transfer or discharge of this Mortgage shall (unless a contrary intention is expressed) operate also as a transfer or discharge (as the case may require) of the D and F Mortgages.

5. (*Add new covenant to insure, Form No.* 18, *p.* 81.)

6. (*Covenant not to register, Form No.* 17, *p.* 80.)

7. (*Add Form No.* 29 *or* 30, *pp.* 90, 91, *provision for reduction of rate of interest.*)

8. (*Provisions of L. P. Act*, 1925, *to apply : adapt Form No.* 45, *p.* 102.)

9. (*Add other special provisions as required.*)

IN WITNESS, &c.(*h*) (*Add Schedule in three parts.*)

(*h*) Where several mortgage debts are consolidated and new security is added, the provisions of the original mortgages cannot always be made applicable to the whole security ; *cf.*, clause 5 in Prec. I of this Section, p. 304

No. IV.

MORTGAGE *to secure a* CONSOLIDATED DEBT *consisting of* MORTGAGE DEBTS *transferred by separate deeds and a Further Advance.*(*i*) (*Legal Estate.*)

THIS CONSOLIDATING MORTGAGE is made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and The —— Assurance Society, Limited, whose registered office is at —— (hereinafter called the Mortgagees), of the other part: WHEREAS:— Parties.

(1) The Borrower is seised in fee simple in possession of the freehold properties hereinafter described, subject to the several mortgage debts amounting to an aggregate sum of £——, secured by the several Mortgages mentioned in the First Schedule hereto, with interest thereon as therein mentioned, but all such interest has been duly paid up to the date hereof: Title of Borrower, subject to Mortgages in first schedule.

(2) The Mortgagees have, at the request of the Borrower, paid to the several persons mentioned in the third column of the said Schedule the amounts of the mortgage debts owing to them respectively on the security of the said Mortgages, and have taken transfers of such mortgage debts and of the securities for the same respectively by the transfers mentioned in the fourth column of the same Schedule: Existing Mortgages have been transferred to the Mortgagees.

(3) The Mortgagees have agreed to lend to the Borrower the further sum of £——, upon having the repayment of both the said sums of £—— and £—— (making together the aggregate sum of £——), with interest thereon, secured in manner hereinafter appearing: Agreement for further advance.

NOW, in pursuance of the said agreement and in consideration of the sum of £——, paid by the Mortgagees for obtaining transfers of incumbrances as aforesaid, and of the sum of £—— now paid by the Mortgagees to the Borrower (the payment and receipt in manner aforesaid, of which said sums of £—— and £——, making the aggregate sum of £——, the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows:—

1. THE Borrower, &c. (*Covenant to pay aggregate principal sum of* £—— *and interest, Forms Nos.* 4 *and* 6, *pp.* 72, 73). Covenant to pay aggregate sum.

2. (1) THE Borrower, As Beneficial Owner, hereby charges by way of legal mortgage, Legal charge.

(*i*) The stamp will be *ad valorem* on the further advance only; it should be adjudicated. Stamp.

ALL, &c. (*parcels by reference to Second Schedule and plan*), WITH the payment to the Mortgagees of the principal money, interest and other money hereby covenanted to be paid:

(2) FOR the purposes of this Charge the legal right of redemption ceases on the said —— next, and in favour of a purchaser the statutory power of sale becomes exercisable from and after that date:

(3) ANY transfer or discharge of this Mortgage shall (unless a contrary intention is expressed) operate also as a transfer or discharge (as the case may require) of the Mortgages mentioned in the First Schedule hereto.

3. (*Add new covenant to insure, Form No.* 18, *p.* 81.)

4. (*Form No.* 17, *covenant not to register.*)

5. (*Provisions of L. P. Act*, 1925, *to apply; adapt Form No.* 45, *p.* 102.)

6. (*Add other special provisions as required.*)

IN WITNESS, &c.(*j*)

THE FIRST SCHEDULE.

Particulars of Mortgages which have been transferred to the Mortgagees.(*k*)

Principal Sums Secured.	Dates of Original Mortgages.	Names of Mortgagees.	Dates of Transfers.
£			
1.	3 Feb. 19—	P.	—— day of ——, 19—.
2.	15 Mar. 19—	Q.	,,
3.	20 Dec. 19—	R.	,,
Total £			

Registered land.

(*j*) Where all the charges separately transferred are registered charges or incumbrances the transfers will be in Form No. 54 in the L. R. R., 1925. There will then be a consolidating transfer referring to the separate transfers and the heading will refer to the property charged. The special provisions in Prec. IV can be incorporated after the charge of the consolidated debt.

If the charges or incumbrances are merely noted on the register (not registered) then Prec. IV will apply and the consolidating mortgage should also be noted. There can be no objection to this form being adopted: L. R. Act, 1925, s. 25 (2).

Covenants with self.

(*k*) As to covenants for titles in transfers with the covenantor or covenantors and another or others: L. P. Act, 1925, s. 82; in statutes the singular includes the plural.

THE SECOND SCHEDULE.

Particulars of the property hereby charged.

No. on Plan.	Description.	Tenancy.	Acreage.

PART IV.

RECONVEYANCES AND RELEASES OF MORTGAGES.

SECTION I.

RECONVEYANCES AND RELEASES TO ABSOLUTE OWNERS.

No. I.

RECEIPT *under L. P. Act*, 1925, *s.* 115, *to be endorsed on, written at the foot of, or annexed to any Mortgage (not being a charge or incumbrance registered under the L. R. Act*, 1925), *where the whole of the Mortgage Debt is paid off.*(*a*) (*Legal Estate.*)

Statutory receipt to absolute owners.

WE, the undersigned, A. M., of, &c., and B. M., of, &c., hereby acknowledge that we have this —— day of —— 19—, received the sum of £—— representing the [aggregate] [balance remaining

(*a*) This follows the form in L. P. Act, 1925, 3rd Sch., Form No. 2. It will, save in the case of an unincorporated building society, be generally better (see L. P. Act, 1925, ss. 68-69) to take the receipt under seal; it will make no difference to the amount of stamp duty. The duty is at the same rate, whether the receipt operates as a discharge or a transfer. Seal.

A first mortgagee, before handing over the deeds to the persons making the payment, may require those persons to produce a certificate of search to show that no land charge or memorial has been registered in respect of a puisne mortgage, for registration imputes actual notice: L. P. Act, 1925, ss. 197–8; but in practice this will seldom be required, see *ib.*, ss. 94 and 96. Handing over deeds

owing in respect of the] principal money secured by the within [above] written [annexed] Mortgage [and by a Further Charge, dated, &c., *or otherwise as required*], TOGETHER with all interest and costs; the payment having been made by C. D., of, &c., and E. F., of, &c.(*b*)

IN WITNESS, &c.(*c*)

(*b*) If the persons paying are not entitled to the immediate right of redemption, state (if the case) that they are paying the money out of a fund applicable to the discharge of the mortgage. For instance "out of capital money for the purposes of the Settled Land Act, 1925, properly applicable for the discharge of the mortgage," *or* "out of money given to them as executors of the late —— for discharging the mortgage," *or* "out of money properly applicable for the discharge of the Mortgage."

If the persons paying desire to negative any right to keep the mortgage alive, see s. 115 (2), add here:—"This receipt shall not operate as a transfer." If the mortgagee has notice of a subsequent incumbrance he should not permit these words to be used if they would prejudice the subsequent mortgagee. If the person paying (*e.g.* a second mortgagee) is entitled to the immediate right of redemption he should take a transfer if the mortgage is to be kept alive. Though a mortgage term ceases when the debt is repaid: L. P. Act, 1925, s. 116, an endorsed receipt or surrender is required as evidence of the discharge just as much as if the mortgage had been effected by a charge by way of legal mortgage.

Enfranchised land.

If the security includes enfranchised land and the manorial incidents have not been extinguished, the receipt must be produced to the steward for endorsement within six months, and the fines, &c., paid. If a surety has not been called on to pay anything this can be mentioned. This form is not applicable to the discharge of a mortgage to secure a current account.

Stamps on reconveyances, &c.

(*c*) The stamp will be 6*d.* for every £100 and part of £100 of the total amount or value of the money at any time secured. The *ad valorem* duty is payable only on the final discharge: *Munro* v. *Inland Revenue Commrs.* [1896], W. N. 149; Highmore, 4th ed., 242.

Equitable mortgages.

Where the mortgage is only equitable (not being a legal second or subsequent mortgage by charge by way of legal mortgage or by demise or sub-demise: *Re Moore* [1912], 2 Ch. 105; 81 L. J. Ch. 503; see also articles 56 Sol. J. 220, 249), as under an agreement to make a mortgage, no reconveyance or statutory receipt is necessary. It is sufficient if a simple receipt not complying with the statutory requirements for the mortgage debt and interest is endorsed and witnessed and the security delivered back to the mortgagor. According to the practice of the Inland Revenue before 1926, a simple receipt, with nothing more, so endorsed, did not require *ad valorem* duty as a reconveyance or "discharge," see Stamp Act, 1891, 1st Sch., "Mortgage" (5); and was exempt from the receipt stamp: *ib.*, "Receipt," Exemption (11). If, however, the receipt contained any such words as "in discharge," the *ad valorem* duty was required, see Alpe, 18th ed., 202; Highmore, 4th ed., 242; *Firth, &c.* v. *Inland Revenue Commrs.* [1904], 2 K. B. 205; 73 L. J. K. B. 632.

Simple receipt.

Stamp.

After 1925, in order to give a simple receipt which does not comply with s. 115, no reference should be made to the person making the payment.

No. 1A.

DISCHARGE *of a* CHARGE *or* INCUMBRANCE *registered under the L. R. Act*, 1925.(*d*)

H. M. Land Registry.
Land Registration Act, 1925.

District ——
Title No. ——
Property ——
Charge No.——

(*Date*) I, A. B., of, &c. (*the registered proprietor of the charge or incumbrance*), hereby admit that the Charge (*or* Incumbrance) dated the —— day of ——, 19—, of which I am the proprietor, has been discharged.

(*To be signed by A. B.*)

No. II.

RELEASE *of* FREEHOLDS, *part of the* SECURITY. VARIATIONS *where there has been a* TRANSFER *of the* MORTGAGE *or a* FURTHER CHARGE. (*Legal Estate.*)

THIS [SURRENDER AND] RELEASE is made, &c., BETWEEN A. B., of, &c., and R. B., of, &c. (hereinafter called the Mortgagees), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part: WHEREAS:— Parties.

(1) This Deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made between the Borrower of the one part, and the Mortgagees [*or if there has been a Transfer*, E. F. (hereinafter called the Original Mortgagee)] of the other part, whereby the property hereinafter described was (with other property) conveyed by the Borrower to the Mortgagees [Original Mortgagee] in fee simple, subject to Mortgage.

(*d*) There is no fee for registering a discharge. A discharge in this form does not attract stamp duty as a discharge: *Firth* v. *I.R.C.* [1904], 2 K. B. 205. If under hand only a receipt stamp (2*d.*) is required; if under seal, 10*s.*

The Registrar may also accept any proof of satisfaction that he may deem sufficient.

On registration of the discharge the mortgage term or sub-term is extinguished: L. R. Act, 1925, s. 35 (2), whether as to the whole or part of the land affected, as the case requires.

If the security includes enfranchised land and the manorial incidents have not been extinguished, the steward's certificate as to payment of fines, &c., due to the lord must be produced on registration: L. P. Act, 1922, s. 129 (5) and (6).

redemption (*e*) on payment by the Borrower to the Mortgagees [the Original Mortgagee and the persons deriving title under him] of a sum of £—— and interest thereon as therein mentioned :

[Variation where there has been a Transfer.]

[(2) By a Transfer of Mortgage dated, &c. (*continue recital of Transfer, as in Form No.* 2, *p.* 70)] :

[Variation where there has been a Further Charge.]

[(3) By a Deed (hereinafter called the Further Charge) dated, &c., and made between the Borrower of the one part, and the Mortgagees of the other part, the Borrower charged the property comprised in the Principal Deed with the payment to the Mortgagees of the further sum of £—— (making, with the said sum of £——, the aggregate principal sum of £——) and interest thereon as therein mentioned] :

Vesting provisions.

(4) By virtue of the Law of Property Act, 1925, the property comprised in the Principal Deed became vested in the Mortgagees for a term of 3,000 years without impeachment of waste subject to cesser on redemption and subject to the said mortgage term in the Borrower in fee simple :

That mortgage debt payable and agreement for release of part.

(5) The said [aggregate] principal sum of £—— now remains due to the Mortgagees upon the security of the Principal Deed [and Further Charge], with the current interest thereon, and they have agreed upon receiving the sum of £—— in part satisfaction of the said mortgage debt to execute such surrender and release as hereinafter appearing :

Surrender of part.

NOW, in pursuance of the said agreement and in consideration of the sum of £——, now paid by the Borrower to the Mortgagees (the receipt of which sum the Mortgagees hereby acknowledge), THIS DEED WITNESSETH as follows :—

Surrender.

1. THE Mortgagees, As Mortgagees, and according to their term or interest, hereby surrender and release unto the Borrower,

Parcels of part.

ALL AND SINGULAR the lands and rights described in the First Schedule hereto, and as regards lands delineated on the plan hereto and thereon edged —— (being part (*f*) of the premises remaining subject to redemption under the Principal Deed),

TO THE INTENT that those premises may be discharged from all claims under the Principal Deed [and Further Charge or

---

Surrender or release.

(*e*) Compare this recital with Form No. 1A, p. 68. Here the point to bring out is the title to the right of redemption. If there is a mortgage term the Precedent will be a surrender, if there is a legal charge the Precedent will be a release.

Stamp where release is partial.

(*f*) Where the mortgagee is releasing only part of his security the stamp is 10*s*.

either of them] [and that so far as regards those premises the said mortgage term shall merge or be extinguished]: Merger of term.

2. THE Mortgagees hereby acknowledge the right of the Borrower to production of the documents mentioned in the Second Schedule hereto and to delivery of copies thereof. Acknowledgment.

IN WITNESS, &c.(*g*) (*Add two Schedules.*)

No. III.

SURRENDER *on* PARTIAL *Discharge of a* MORTGAGE *of* LEASEHOLDS *by* SUB-DEMISE. (*Legal Estate.*)

THIS SURRENDER, made, &c., BETWEEN C. D., of, &c., and R. D., of &c. (hereinafter called the Mortgagees), of the one part, and A. B., of, &c. (hereinafter called the Borrower), of the other part: Supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., and made, &c., whereby the messuage and premises, hereinafter described with the other property comprised in a Lease dated, &c. (being a lease of five houses at a yearly rent of £—— for each house), were demised by the Borrower to the Mortgagees for the residue of the term of ninety-nine years from the —— day of ——, granted by the said Lease (except the last three days thereof), subject to redemption on payment by the Borrower to the Mortgagees of a sum of £—— and interest thereon as therein mentioned, WITNESSETH as follows:— Parties. Mortgage by sub-demise.

1. IN consideration of the sum of £——, now paid by the Borrower to the Mortgagees in part discharge of the principal money secured by the Principal Deed (the receipt whereof the Surrender of part of the property.

(*g*) If there have been several transfers or further charges these can be placed in a schedule and the effect thereof recited. Several transfers or further charges.

If the security to be released consists of enfranchised land, this will be scheduled and it should thereby appear of what manor the land was formerly held. Any compensation agreement or notice to determine the compensation if entered into or served should be recited. The surrender or release must be produced to the steward within six months from date and the fines, &c., paid, unless the manorial incidents have been extinguished. Enfranchised land. Production to Steward.

In the case of registered charges adapt Prec. No. Ia, *supra*, ending thus— "have been wholly discharged as to the land shown and edged red on the accompanying plan signed by me [*or refer if practicable to the L. R. General Map*] and have been discharged to the extent of £—— as to the remainder of the land comprised in the Charges, Nod. —— and ——." Registered land.

Mortgagees hereby acknowledge), the Mortgagees, As Mortgagees, and according to their term or interest, hereby surrender and assign unto the Borrower,

ALL THAT the messuage and land described in the First Schedule hereto (being part of the premises comprised in and demised by the Principal Deed),

TO THE INTENT that the derivative term created by the Principal Deed shall, so far only as regards the premises described in the First Schedule hereto, forthwith merge and be extinguished in the said term of ninety-nine years granted by the said Lease, and that all claims under the Principal Deed shall (so far only as aforesaid) be hereby discharged.

Acknowledgment.

2. THE Mortgagees hereby acknowledge the right of the Borrower to production of the documents mentioned in the Second Schedule hereto and to delivery of copies thereof.

IN WITNESS, &c. (*Add two Schedules.*)(*h*)

No. IV.

SURRENDER *on* PARTIAL *discharge of a* MORTGAGE *of* LEASEHOLDS *formerly by* ASSIGNMENT. (*Legal Estate.*)

Parties.

THIS SURRENDER is made, &c., BETWEEN C. M., of, &c., and D. M., of, &c. (hereinafter called the Mortgagees), of the one part, and A. B., of, &c. (hereinafter called the Borrower), of the other part: WHEREAS:—

Mortgage by assignment.

(1) This deed is supplemental to a Mortgage (hereinafter called the Principal Deed) dated, &c., whereby the messuage and land hereinafter described (with other property) comprised in a Lease dated, &c. (being a lease of —— houses at a yearly rent of £—— for each house), were assigned by the Borrower to the Mortgagees for the residue of a term of 999 years from ——, granted by the said Lease subject to redemption on payment by the Borrower to the Mortgagees of a principal sum of £—— and interest thereon as therein mentioned:

Vesting provisions.

(2) By virtue of the First Schedule, Pt. VIII, to the Law of Property Act, 1925, the premises comprised in the said Lease became vested in the Mortgagees for the residue of the term thereby granted, less ten days, subject to cesser on redemption under the Principal Deed and subject to the said mortgage term in

Apportionment of rent.

Registered land.

(*h*) The mortgagees would not be advised to release part of the security unless the rent had been apportioned in respect of the part released so as to leave a rent apportioned in respect of the property retained: L. P. Act, 1925, s. 89 (6). As to registered charges, see note to last Precedent.

the Borrower for the residue of the term granted by the said Lease:

Agreement to surrender part.

(3) The Mortgagees have, at the request of the Borrower, and on payment of the sum of £—— towards satisfaction of the principal money owing on the security of the Principal Deed, agreed to surrender the property hereinafter described, retaining the other property comprised in the said Lease in regard to which an aggregate apportioned yearly rent of £—— will remain payable:

NOW, in pursuance, &c., and in consideration, &c. (the receipt, &c.), THIS DEED WITNESSETH as follows:—

Surrender of part.

1. THE Mortgagees, As Mortgagees, hereby surrender and release unto the Borrower,

Parcels.

ALL that messuage and land described in the First Schedule hereto in respect of which a yearly rent of £—— is payable under the said Lease, TO THE INTENT that the derivative mortgage term in those premises created as aforesaid shall merge and be extinguished in the head term created by the said Lease, and that the claims under the Principal Deed shall so far only as regards the premises hereby surrendered be discharged.

2. (*Add acknowledgment as in last Precedent, and see note thereto as to not giving a surrender of part unless the rent is legally apportioned.*)

IN WITNESS, &c. (*Add two Schedules.*) [*As to registered charges see Prec. No. IA and note to Prec. No. II.*]

SECTION II.

RECONVEYANCES AND RELEASES WHERE THE RIGHT OF REDEMPTION IS SETTLED OR IS HELD ON TRUST FOR SALE.

No. I.

RECEIPT *on* DISCHARGE *of a* MORTGAGE *formerly affecting* SETTLED LAND *of whatever tenure, where the money is paid by S. L. Act trustees out of* CAPITAL MONEY *by the direction of the* TENANT *for* LIFE.(*i*) (*Legal Estate.*)

Statutory receipts.

WE, A. M., of, &c., and B. M., of, &c., hereby acknowledge

(*i*) For registered land see Prec. No. IA in last section. Where the whole debt is paid off and the entire security is to be discharged a receipt endorsed in accordance with L. P. Act, 1925, s. 115, is all that is required, the stamp is 6*d.* per £100 on the amount at any time secured. On the other hand where part only of the security is to be discharged a deed of surrender should be used. See note to Prec. I of last section.

Reconveyances where the whole of the property is to be discharged.

that we have this —— day of —— 19— received the sum of £——, representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] Mortgage [and by the Further Charges and other documents mentioned in the Schedule hereto] together with all interest and costs :

THE principal money has been paid by E. T., of, &c., and F. T., of, &c., the present Settled Land Act trustees, under a Vesting Instrument dated, &c., relating to the property affected by the said Mortgage [and other documents mentioned in the Schedule hereto] out of capital money available for that purpose by the direction of T. L., of, &c., the estate owner under the said Vesting Instrument.

IN WITNESS, &c. [*Add Schedule of documents if required.*]

No. II.

RELEASE *or* SURRENDER *of* MORTGAGE *term affecting freeholds, enfranchised land and leaseholds comprised in a* SETTLEMENT *where part only of mortgage debt is paid off.* (*Legal Estate.*)

Parties.

THIS [SURRENDER AND] RELEASE is made, &c., BETWEEN A. M., of, &c., and B. M., of, &c. (hereinafter called the Mortgagees), of the 1st part, T. L., of, &c. (hereinafter called the Borrower), of the 2nd part, and E. T., of, &c., and F. T., of, &c. (hereinafter called the Trustees), of the 3rd part : WHEREAS :—

Vesting instrument. (*j*)

(1) By a Vesting Deed dated, &c., it was declared that the freehold properties mentioned in the First Schedule hereto (with other freehold properties), the enfranchised lands mentioned in the Second Schedule hereto, and the leasehold properties mentioned in the Third Schedule hereto, were vested in the Borrower as to the said freehold properties and enfranchised lands in fee simple (but as to the enfranchised lands subject to the manorial incidents and rights of the lord of the manor affecting the same) and as to the said leasehold properties for the terms and at the rents mentioned in the Third Schedule hereto, and as to all the said properties, Upon the trusts and subject to the powers and provisions upon and subject to which the same ought to be held

Variation where mortgage was originally paramount.

(*j*) If the mortgage was made before the date of the Settlement it should be recited first together with a reference to the L. P. Act, 1925, 1st Sch., to show that a mortgage term had been created, and then in reciting the Vesting Deed the land will be referred to as having been comprised in the mortgage.

under a Settlement dated, &c. [*or* under a Will dated, &c., and proved, &c., of —— who died, &c.], And that the trustees were the trustees of the settlement for the purposes of the Settled Land Act, 1925 :

Compensation agreement.

(2) By a Compensation Agreement (*k*) dated, &c. (*recite this agreement showing whether or not the mineral and sporting rights of the lord were acquired*) :

Receipt for compensation.

(3) By a receipt bearing even date with, and endorsed on the said Compensation Agreement, it appears that a gross sum of £—— was paid as compensation for the extinguishment of the manorial incidents and rights aforesaid and this sum was in fact advanced by the Mortgagees (with other money) on the security next hereinafter mentioned :

Legal charge.

(4) By a Legal Charge (hereinafter called the Principal Deed) dated, &c., and made between the Borrower of the 1st part, the Trustees of the 2nd part and the Mortgagees of the 3rd part, in consideration of the sum of £——, paid by the Mortgagees, by the direction of the Borrower, to the Trustees and in exercise of the powers conferred by section seventy-one of the Settled Land Act, 1925, the Borrower charged by way of legal mortgage, ALL the properties mentioned in the first three Schedules hereto (with other freehold properties) with the payment to the Mortgagees of the principal sum of £—— and interest thereon as therein mentioned :

Sales of parts.

(5) Certain parts of the properties comprised in the Principal Deed have from time to time been sold, but all the purchase money has, with the consent of the Mortgagees, been paid to the Trustees, the security remaining being considered sufficient :

State of mortgage debt.

(6) The said principal sum of £——, and no more, remains owing to the Mortgagees upon the security of the Principal Deed with the current interest thereon :

Agreement to pay off partially mortgage out of capital money and for partial release.

(7) The Trustees, as such trustees as aforesaid, by the direction of the Borrower, have agreed out of capital money arising under the Settlement, and applicable for the purpose, to pay to the Mortgagees the sum of £—— (being part of the said mortgage debt of £——) And the Mortgagees have agreed, upon receiving the said sum towards satisfaction of the said mortgage debt, to release the properties mentioned in the first three Schedules hereto in manner hereinafter appearing :

(*k*) As the manorial incidents have *ex hypothesi* been extinguished it will not be necessary to produce this surrender to the steward of the manor.

NOW, in pursuance of the said agreement and in consideration of the sum of £——, now paid by the Trustees as such trustees as aforesaid, by the direction of the Borrower to the Mortgagees out of such capital money as aforesaid (the receipt of which sum the Mortgagees hereby acknowledge), THIS DEED WITNESSETH as follows :—

Release [and surrender].

1. THE Mortgagees, As Mortgagees, according to their [terms or (*l*)] interests hereby [surrender and] release unto the Borrower, ALL AND SINGULAR, the properties described in the First, Second and Third Schedules hereto respectively discharged from all claims under the Principal Deed.

[AND to the Intent that the respective mortgage terms vested in the Mortgagees as aforesaid shall, so far only as regards the premises hereby released, merge and be extinguished.]

Saving of charge for balance of mortgage debt.

2. NOTHING herein contained shall affect the right of the Mortgagees to enforce payment of the sum of £—— (balance of the said mortgage debt) and the interest due and to become due under the Principal Deed or the securities thereby made, other than as respects the premises hereby expressly released.

Acknowledgment.

3. (*Add acknowledgment by the Mortgagees of the right of the Borrower to production of the documents in the Fourth Schedule.*)

IN WITNESS, &c. (*Add four Schedules.*)

No. III.

SURRENDER *by* MORTGAGEES *of a long* TERM *of* YEARS *created by a* SETTLEMENT, *in* PART *of the land affected where part of the* MORTGAGE *debt is* PAID OFF *out of* CAPITAL MONEY *for the purposes of the* S. L. ACT. (*Legal Estate.*)

Parties.

THIS SURRENDER is made, &c., BETWEEN C. M., of, &c., and E. M., of, &c. (hereinafter called the Mortgagees), of the 1st part, G. T., of, &c., and K. T., of, &c. (hereinafter called the Trustees), of the 2nd part, and T. L., of, &c. (*tenant for life*) (hereinafter called the Borrower), of the 3rd part : WHEREAS :—

Settlement and mortgage by

(1) This Deed is supplemental to, FIRST, a Deed (hereinafter called the Settlement) dated, &c., and made, &c., being a settle-

---

Variations for mortgage terms.

(*l*) Throughout this Precedent the words in square brackets will only be used where the Mortgagees have mortgage terms vested in them, either under L. P. Act, 1925, 1st Sch., or by express demise or sub-demise. As only part of the debt is paid off the stamp will be 10*s*.

ment of certain freehold properties (hereinafter called the Settled Freeholds) at, &c., and, SECONDLY, a Deed (hereinafter called the Mortgage) dated, &c., and made, &c., whereby certain property at —— (being part of the Settled Freeholds) was assigned to the Mortgagees for the residue of a term of 1,000 years created by the Settlement, subject to redemption by the persons deriving title under the Settlement on payment to the Mortgagees of a sum of £—— and interest thereon as therein mentioned : assignment of portions term.

(2) By virtue of the Law of Property Act, 1925, the property comprised in the Mortgage became vested in the Mortgagees for the residue of the said term of 1,000 years, less ten days, and (by reason of all money, duties and costs raisable under the said term created by the Settlement having been discharged) the said head term became satisfied and, subject to the said mortgage term, the fee simple became vested in the Borrower on the trusts of the Settlement : Vesting provisions.

(3) By a Vesting Deed dated, &c., and made between the Trustees of the one part and the Borrower of the other part, it was declared that the Settled Freeholds were vested in the Borrower in fee simple (subject so far as affected thereby to the Mortgage) on the trusts of the Settlement, And that the Trustees were the Trustees of the Settlement for the purposes of the Settled Land Act, 1925 : Vesting deed.

(4) The Trustees have in their hands capital money liable to be applied in the discharge of incumbrances affecting the settled freeholds or any part thereof : Trustees have capital money in hand.

(5) The said principal sum of £—— remains due to the Mortgagees upon the security of the Mortgage with the current interest thereon : State of mortgage debt.

(6) The Trustees, as such trustees as aforesaid, by the direction of the Borrower, have agreed out of such capital money to pay to the Mortgagees the principal sum of £—— towards satisfaction of the principal money owing on the security of the Mortgage and the Mortgagees have agreed in consideration of such payment to execute such surrender of part of the security in manner hereinafter appearing : Agreement to pay off part of mortgage debt.

NOW, in pursuance of the said agreement and in consideration of the sum of £——, now paid by the Trustees as such trustees as aforesaid, by the direction of the Borrower to the Mortgagees, out of such capital money as aforesaid (the receipt whereof the Mortgagees hereby acknowledge), THIS DEED WITNESSETH as follows :—

1. THE Mortgagees, As Mortgagees, hereby surrender unto the Borrower,

Surrender of term in regard to part.

Parcels.

ALL the messuages, lands, and property described in the Schedule hereto (being part of the property comprised in the Mortgage),

TO THE INTENT that the said mortgage term of 1,000 years (less ten days) shall, so far only as regards the property mentioned in the Schedule hereto, forthwith merge and be extinguished in the freehold of the premises discharged from all principal money and interest secured by and from all claims under the Mortgage.(*m*)

IN WITNESS, &c. (*Add Schedule of property to be surrendered. As to registered land, adapt Prec. IA, Sec. I, referring to a plan of the land to be discharged.*)

No. IV.

RECEIPT *on discharge of a* MORTGAGE *affecting* FREEHOLDS, ENFRANCHISED LAND *and* LEASEHOLDS, *the money being paid by* TRUSTEES *holding the right of redemption on* TRUST *for* SALE. VARIATION *where the money is paid by* PERSONAL REPRESENTATIVES. (*Legal Estate.*)

WE, A. M., of, &c., and B. M., of, &c., hereby acknowledge that we have, this —— day of —— 19—, received the sum of £——, representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] Mortgage [and by a Further Charge dated, &c., *or*, and by the other documents mentioned in the Schedule hereto], together with all interest and costs, the payment having been made by C. T., of, &c., and E. T., of, &c., as the present trustees under a Conveyance on Trust for Sale dated, &c. [*or*, as the present trustees under an Assent on Trust for Sale dated, &c.] [*or*, as the Personal Representatives of the late X. Y., of ——, who died on —— 19—], out of funds properly applicable for the discharge of the mortgage debt.

IN WITNESS, &c.(*n*) [*Add Schedule if required. As to registered land, Prec. IA, Sec. I, supra, applies.*]

(*m*) The surrender is made to the owner of the fee simple for the original portions term has become satisfied. Even if money remained to be raised on the portions term it would, on the execution of the vesting deed, have been converted into an equitable term: S. L. Act, 1925, 2nd Sch., para. 1 (6). The stamp will be 10*s.*, as the release is only partial.

(*n*) The stamp will be 6*d.* per £100 on the amount at any time secured. If the receipt relates to enfranchised land and the manorial incidents have not

Section III.

MISCELLANEOUS RECONVEYANCES AND RELEASES.

No. I.

DISCHARGE *of* Mortgage *affecting* Freeholds, Enfranchised Land *and* Leaseholds *by a* Bank *by* Endorsed Receipt.(*a*) (*Legal Estate.*)

We, the within-named —— Bank, Limited, hereby acknowledge that we have this —— day of ——, 19—, received all the money secured by the within written Mortgage (including interest, commission and costs), the payment having been made by A. B., of, &c. :

In witness, &c.

No. II.

SURRENDER *of a* Sub-mortgage (*being a* Mortgage *of a* Mortgage Debt) *where the* Principal Debt *is paid off and the* Sub-mortgagor *concurs.* (*Legal Estate.*)

THIS SURRENDER is made, &c., Between A. B., of, &c. (hereinafter called the Sub-mortgagee (*b*)), of the 1st part, C. D., of, &c. (hereinafter called the Mortgagee), of the 2nd part, and E. F., of, &c. (hereinafter called the Borrower), of the 3rd part : Whereas :— Parties.

(1) By a Deed (hereinafter called the Principal Mortgage) dated, &c., and made between the Borrower of the one part and Principal Mortgage.

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been extinguished it must be produced to the steward within six months for endorsement, and the fines, &c., must be paid. Under L. P. Act, 1925, s. 115, the persons redeeming may, if they think fit, require a surrender to be executed in place of an endorsed receipt. Where this is required the Precedents relating to partial releases can be adapted.

(*a*) The amount of the stamp will be determined by the *ad valorem* stamp on the mortgage. In other words, the reconveyance must carry a stamp of 6*d.* for every 2*s.* 6*d.* with which the mortgage deed is stamped. Stamp.

It is assumed that the mortgage was to secure an account current. If the mortgage affected enfranchised land and the manorial incidents have not been extinguished, the receipt must be produced to the steward of the manor within six months for endorsement, and the fines, &c., must be paid. In the case of registered land, Prec. Ia, p. 313, *supra*, applies.

(*b*) The sub-mortgagee has the legal sub-term derived out of the principal mortgage term : L. P. Act, 1925, s. 86 ; 1st Sch., Pt. VII, para. 4 ; Pt. VIII, para. 4. If preferred, the discharge of the two mortgages can be effected, first by a receipt endorsed on the sub-mortgage, and secondly, by a receipt endorsed on the principal mortgage. This may involve more stamp duty. Alternative method by endorsed receipts.

In the case of registered land, Prec. Ia, p. 313, *supra*, applies. There should be separate instruments of discharge for the principal debt and the sub-mortgage debt.

the Mortgagee of the other part, certain freehold properties in the county of —— were conveyed by the Borrower to the Mortgagee in fee simple, subject to redemption on payment by the Borrower to the Mortgagee of the principal sum of £1,000 and interest thereon as therein mentioned:

Sub-mortgage.

(2) By a Deed (hereinafter called the Sub-mortgage) dated, &c., and made between the Mortgagee of the one part and the Sub-mortgagee of the other part, whereby the Mortgagee assigned to the Sub-mortgagee absolutely the principal sum of £1,000 secured by the Principal Mortgage and all interest thereon and the benefit of all securities for the same, and also conveyed to the Sub-mortgagee in fee simple all the property comprised in the Principal Mortgage, subject to the right of redemption then subsisting under the Principal Mortgage, and as to all the premises thereby respectively assigned and conveyed, subject to redemption by the Mortgagee on payment to the Sub-mortgagee of the principal sum of £500 with interest thereon as therein mentioned:

Vesting provisions.

(3) By virtue of the Law of Property Act, 1925, the property comprised in the Principal Mortgage became vested in the Borrower for an estate in fee simple, subject, FIRST, to a term of 3,000 years without impeachment of waste in the Mortgagee, subject to cesser on redemption under the Principal Mortgage, and SECONDLY, to a term of 3,000 years, less one day, in the Sub-mortgagee, subject to cesser on redemption under the Sub-mortgage:

Mortgage debts payable and agreement for surrender.

(4) The principal sum of £1,000 now remains owing to the Mortgagee upon the security of the Principal Mortgage, and the principal sum of £500 now remains due to the Sub-mortgagee upon the security of the Sub-mortgage, but all interest, on the said sums has been paid, as the Mortgagee and Sub-mortgagee hereby respectively acknowledge, and they have agreed, on payment of the said principal sum of £1,000 in manner hereinafter appearing, to execute such surrender as is hereinafter contained:

Surrender by Sub-mortgagee and by Principal Mortgagee.

NOW, in pursuance of the said agreement and in consideration of the sum of £500 paid by the Borrower to the Sub-mortgagee, and of the further sum of £500 paid by the Borrower, by the direction of the Sub-mortgagee (*c*) to the Mortgagee (the receipt of which sums the Sub-mortgagee and Mortgagee hereby respectively acknowledge), THIS DEED WITNESSETH that

(*c*) The sub-mortgagee is legally entitled to the whole mortgage debt, hence he should direct payment to the mortgagee of the balance after the sub-mortgage debt has been discharged.

the Sub-mortgagee, As Mortgagee, hereby surrenders and releases and the Mortgagee, As Mortgagee, hereby surrenders and confirms unto the Borrower,

ALL AND SINGULAR, the properties conveyed by and comprised in the Principal Mortgage and the Sub-mortgage or either of them or which are now by any means vested in the Mortgagee or Sub-mortgagee, subject to redemption under the Principal Mortgage and the Sub-mortgage respectively, Parcels.

TO THE INTENT that the respective mortgage terms of 3,000 years, less one day, and 3,000 years respectively, subsisting for the purposes of the Sub-mortgage and Principal Mortgage, shall merge and be extinguished and that the premises affected shall be discharged from all principal money and interest secured by and from all claims under the Principal Mortgage and the Sub-mortgage or either of them.

IN WITNESS, &c.

No. III.

DISCHARGE *of a* SUB-MORTGAGE (*being a* MORTGAGE *of a* MORTGAGE DEBT) *where the* SUB-MORTGAGE DEBT *alone is paid off by* ENDORSED RECEIPT. (*Legal Estate.*)

I, A. B., of, &c., hereby acknowledge that I have this —— day of —— 19—, received the sum of £—— representing the [balance remaining owing in respect of the] principal money secured by the within [above] written Sub-mortgage [and by a Further Charge dated, &c.], together with all interest and costs, the payment having been made by C. D., of, &c. [*if C. D. is not the sub-mortgagor state in what capacity he pays the debt*].(*d*) Statutory receipt.

IN WITNESS, &c.

(*d*) If the person paying is not entitled to the right of redemption under the sub-mortgage, state, if the case, that he is paying the money out of a fund applicable for its discharge. If it is not intended that the receipt should be capable of operating as a transfer add the words :—

"This receipt shall not operate as a transfer."

This addition is only required where any doubt would otherwise arise.

Notice in writing of the receipt must be given to the original or principal borrower. As to registered land, Prec. IA, p. 313, *supra*, applies, substituting "Sub-Charge" for "Charge." Notice.

No. IV.

DISCHARGE *of a* MORTGAGE *of a* LIFE INTEREST *in* LAND *and in* CAPITAL MONEY *and of* POLICIES *of* ASSURANCE (*e*) *by* ENDORSED RECEIPT. (*Equitable Interest.*)

Statutory receipt.

WE, A. B., of, &c., and C. D., of, &c., hereby acknowledge that we have this —— day of —— 19— received the sum of £——, representing the [balance remaining owing in respect of the] principal money secured by the within [above] written Mortgage of the life interest of E. F., of, &c., in certain land and capital money and of policies on his life, together with all interest and costs, the payment having been made by X., of, &c., and Y., of, &c., the executors of the said E. F., who died on —— 19—, out of money applicable for the discharge of the said Mortgage.

IN WITNESS, &c.

No. V.

WARRANT *of* ATTORNEY *to enter up Satisfaction of* JUDGMENT.

To A. B., of, &c., and C. D., of, &c., Solicitors of the Supreme Court of Judicature, jointly and severally: WHEREAS:—

Warrant to confess judgment.

(1) (*Here recite warrant of attorney by E. F. to G. H. to appear for E. F. in an action for debt for £——, for money borrowed, at the suit of L. M., of, &c., and to confess judgment against E. F. for the sum of £——, and costs of action*):

Judgment entered up.

(2) Pursuant to the recited warrant of attorney, on the —— day of ——, a judgment was duly entered up at the suit of the said L. M. against the said E. F. for the sum of £—— and costs of the said action:

Money secured by judgment has been paid.

(3) The said sum of £—— and all interest thereon, and all other money secured by the said judgment, have been duly paid to the said L. M., as he hereby admits:

NOW THESE ARE TO DESIRE you, the attorneys above named, or either of you, forthwith to enter up upon record of the said Court satisfaction of the said judgment:

Power to enter satisfaction.

AND FOR whatsoever you or either of you shall do in the premises, this shall be a sufficient warrant or authority.

IN WITNESS, &c.

Notice.

(*e*) Notice of the receipt must be given to the S. L. Act trustees and to the Insurance Companies. If a priority caution has been lodged in the Minor Interests Index this should be withdrawn.

No. VI.

RECEIPT *to be* ENDORSED ON *or* ANNEXED TO *a* MORTGAGE *to a* BUILDING SOCIETY *on payment of the* MONEY *secured thereby.*(*f*) (*Legal Estate.*)

THE within named —— Building Society hereby acknowledge to have this —— day of ——, 19—, received all money intended

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(*f*) By the Building Societies Act, 1874, s. 42, it was provided that when all money intended to be secured by any mortgage or further charge given to a society under the Act had been fully paid or discharged, the society might endorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the right of redemption, or to such persons and to such uses as he might direct, or a receipt under the seal of the society, countersigned by the secretary or manager in the form specified in the schedule to the Act, and such receipt should vacate the mortgage, or further charge, or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the right of redemption, without any reconveyance or resurrender. As to endorsement on mortgage of receipt under Act of 1874.

The effect of the endorsement above mentioned was to vest the legal estate in the parties who had the best right to call for it: *Hosking* v. *Smith* (1888), 13 A. C. 582; 58 L. J. Ch. 367; *Crosbie-Hill* v. *Sayer* [1908], 1 Ch. 866; 77 L. J. Ch. 466. For instance, where there was a mortgage to a building society, and after that there were successive equitable mortgages of the same property, and the society was paid off by the mortgagor, the effect of the endorsement was to vest the legal estate in the equitable mortgagee who was first in point of time, unless the society was paid off by a subsequent equitable mortgagee who had no notice of the prior encumbrance, in which case the legal estate vested in that mortgagee: *Fourth City B. S.* v. *Williams* (1880), 14 Ch. D. 140; 49 L. J. Ch. 245. And if the subsequent mortgagee advanced an additional sum to the mortgagor at the same time, the protection afforded by the legal estate extended to the further advance: *Hosking* v. *Smith, supra*; see also Dart. 7th ed., 846. Operation and effect of endorsement of receipt under Act of 1874.

This section has been amended by L. P. Act, 1925, s. 115, under which the names of the persons making the payment must be mentioned in the receipt, thus removing the difficulties arising from *Hosking* v. *Smith* and *Crosbie-Hill* v. *Sayer, supra*; the receipt (when taking effect as a discharge) will either operate as a surrender of a mortgage term taking effect by demise or sub-demise, or where the mortgage does not operate as a demise or sub-demise as a reconveyance or release to the person who immediately before the receipt was entitled to the right of redemption; in this respect following the Act of 1874. But where the person paying off is not entitled to the immediate right of redemption, the receipt will (if it is feasible, see *Re Rumney and Smith* [1897], 2 Ch. 351; 66 L. J. Ch. 641; *Sun, &c., Soc.* v. *Western, &c., Soc.* [1921], 2 Ch. 438; 91 L. J. Ch. 74) operate as a transfer, unless it is otherwise expressly provided or the debt is paid off out of money properly applicable for the discharge of the mortgage. In no case can a mortgagor keep a mortgage debt alive so as to affect prejudicially a subsequent incumbrancer, and where there is no right to keep the debt alive (see, *e.g.*, under s. 116, for the benefit of a tenant for life), the receipt cannot operate as a transfer. The Registrar of Building Societies contends that the form of receipt given in the schedule to the Act of 1874 is unaffected by L. P. Act, 1925, s. 115, for sub-s. (9) only Amendment by L.P. Act, 1925, s. 115.

to be secured by the within- [*or* above-] written Mortgage [and by a Further Charge dated, &c.]:

THE said money was paid by C. M., of, &c. [out of money applicable for the discharge of the said Mortgage and Further Charge].

[This Receipt shall not operate as a transfer.(*g*)]

IN WITNESS whereof the seal of the said Society is hereto affixed the day and year first above-written by order of the Board of Directors [*or* Committee of Management] in the presence of,

A. B., Secretary [*or* Manager].

[*Other witnesses if any required by the rules of the Society.*]

No. VII.

RECEIPT *to be* ENDORSED ON *or* ANNEXED TO *a* MORTGAGE *to a* FRIENDLY SOCIETY *on payment of* MONEY *secured thereby.*(*h*) (*Legal Estate.*)

THE Trustees of the within-named —— Society hereby acknowledge to have received this —— day of ——, 19—, all money intended to be secured by the within- [*or* above-] written Mortgage [and Further Charge dated, &c.].

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speaks of the "operation" of the receipt; but to omit a reference to the payee would wholly defeat the object of the section.

One receipt sufficient. After 1925, one endorsed receipt will be sufficient, any further charge which is to be cleared at the same time as the mortgage, should be mentioned in the receipt: *ib.*, s. 115 (7), 3rd Sch., Form No. 2.

Stamps. A receipt in the statutory form for the amount due on a Building or Friendly Society's mortgage is exempt from stamp duty.

Registered land. This form of endorsed receipt is accepted in the case of a charge or mortgage affecting registered land.

(*g*) Where there is no express provision in the mortgage to the society, for capitalising the principal money owing at the date of a transfer to a third party and discharging the special provisions applicable only to a loan by a building society, then these words in square brackets may be useful as the case might come within *Re Rumney and Smith, supra.*

(*h*) See Friendly Societies Act, 1896, s. 53. The receipt is exempt from stamp duty: Highmore, 4th ed., 345.

The Act of 1896 has, as respects the discharge of mortgages, been amended in the same way by L. P. Act, 1925, s. 115, as the Building Societies Act, 1874, see note to last Precedent.

Registered land. This form of endorsed receipt is accepted in the case of a charge or mortgage affecting registered land.

THE said money was paid by C. M., of, &c. [out of money applicable for the discharge of the said Mortgage and Further Charge].

AS WITNESS the hands of the Trustees and Secretary of the said Society.

Signed
——, *Trustees.*

Countersigned
——, *Secretary.*

No. VIII.

RECEIPT *by an* URBAN DISTRICT COUNCIL *to be endorsed on or annexed to a* MORTGAGE *made under the* SMALL DWELLINGS ACQUISITION ACTS.(*i*)

Statutory receipt.

THE Local Authority of —— hereby acknowledge that they have this —— day of ——, 19—, received the sum of £—— representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within- [above-] written [annexed] Mortgage [and by a Further Charge dated, &c., *or otherwise as required*], together with all interest and costs ; the payment having been made by ——, of, &c., and ——, of, &c., out of money in their hands properly applicable for the discharge of the Mortgage [*or otherwise as required*].

IN WITNESS, &c.

Form ; Stamp.

(*i*) This is the form of receipt given in the 4th Sch. to the Housing, &c., Act, 1919. It follows on the lines of the receipt prescribed under L. P. Act, 1925, s. 115. No stamp duty is payable in respect of the receipt : *ib.*, s. 49, proviso (*b*) ; it is conceived that this exemption is not affected by s. 115.

PART V.

STATUTORY FORMS OF MORTGAGES, TRANSFERS, AND DISCHARGES.(*a*)

No. I.

STATUTORY CHARGE *by way of* LEGAL MORTGAGE *of* FREEHOLDS *or* LEASEHOLDS.(*b*) (*Legal Estate.*)

Parties. THIS LEGAL CHARGE, made by way of statutory mortgage, the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part:

Legal charge. WITNESSETH that, in consideration of the sum of £——, now paid to the Borrower by the Mortgagee, of which sum the

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(*a*) These are the Forms in the Fourth Schedule to the L. P. Act, 1925, (see ss. 117-120), and take the place of the Forms in the Third Schedule to the Conv. Act, 1881. They are only used in simple cases, and apply exclusively to freeholds and leaseholds. They are not recommended for the purposes of registered land.

Effect given to statutory charge by L. P. Act, 1925, s. 117.

(*b*) This form (No. 1) of statutory charge is given in the Fourth Schedule to the L. P. Act, 1925. It includes, by virtue of the Act, first, a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect that the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six months from the day stated for payment of the mortgage money; and, secondly, a proviso to the effect that if the mortgagor on the stated day pays to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property, or transfer the benefit of the mortgage as the mortgagor may direct.

The provisions of s. 117 apply to a statutory mortgage made under Conv. Act, 1881, s. 26, which, by virtue of L. P. Act, 1925, 1st Sch., Pts. VII or VIII, can only take effect as mortgages by demise or sub-demise; the new implied covenant and proviso are implied in such a mortgage. The footnote to Form No. 1 says that variations may be made in the forms in the Fourth Schedule for leasehold lands, or for giving effect to special arrangements. Also that the mortgagee will be in the same position as if the charge had been effected by a demise of freeholds or a sub-demise of leaseholds. See also as to charges by way of legal mortgage: s. 87.

Borrower hereby acknowledges the receipt, the Borrower, As Mortgagor and As Beneficial owner, hereby charges by way of legal mortgage:—

ALL THAT, &c. (*parcels of freeholds*),

[*In the case of leaseholds the parcels will be*—ALL the property comprised in and demised by a Lease dated, &c., and made between, &c., whereby certain property, known as ——, was demised to —— for a term of —— years from ——, at a yearly rent of £——, and subject to the lessee's covenants and conditions.]

WITH the payment to the Mortgagee on the —— day of ——, 19— of the principal sum of £——, as the mortgage money, with interest thereon at the rate of £— per cent. per annum.

IN WITNESS, &c.

No. II.

STATUTORY TRANSFER *of a* STATUTORY CHARGE *or* MORTGAGE, MORTGAGOR NOT JOINING.(*c*)

THIS TRANSFER OF MORTGAGE, made by way of statutory transfer, the —— day of ——, 19—, BETWEEN C. D., of, &c., of the one part, and E. F., of, &c., of the other part, Supplemental to a Legal Charge [Mortgage (*d*)] made, by way of Statutory Mortgage, dated, &c., and made, &c. (being a mortgage of lands at ——, for securing the sum of £—— and interest): Parties.

(*c*) These statutory forms of transfer were only applicable to mortgages (of freeholds or leaseholds) in the statutory form: *Re Beachey* [1904], 1 Ch. 67; 73 L. J. Ch. 68; but the ordinary form of transfer in the 3rd Sch., Form No. 1, operating under s. 114, takes effect in a way similar to that of the statutory form, hence the difficulty arising in *Re Beachey, supra*, has been removed. Statutory forms of transfers of mortgages.

The above is Form No. 2 in the Fourth Schedule to the L. P. Act, 1925, except that it supplies a short reference to the property comprised in the mortgage deed. With reference to a deed in the above form, it is provided by s. 118 of the Act that it shall have effect as follows:—

"(i) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred (who, with his personal representatives and assigns, is in this section designated the transferee), the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; (ii) All the term and interest, if any, subject to redemption of the mortgagee in the mortgaged land, shall vest in the transferee, subject to redemption." Effect of s. 118.

(*d*) This and the next two Precedents also apply to a transfer of a statutory mortgage made before 1926, which will then be referred to as a mortgage instead of a legal charge. Mortgage or Legal Charge.

Transfer of benefit of legal charge [*or* mortgage].

WITNESSETH that, in consideration of the sum of £——, now paid to the said C. D. by the said E. F. (being the aggregate amount of £——, mortgage money, and £——, interest due in respect of the said Legal Charge [Mortgage], of which sum the said C. D. hereby acknowledges the receipt), the said C. D., As Mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said Legal Charge [Mortgage].

IN WITNESS, &c.

No. III.

STATUTORY TRANSFER *of a* STATUTORY CHARGE *or* MORTGAGE, *a* COVENANTOR JOINING.(*e*) (*Legal Estate.*)

Parties.

THIS TRANSFER OF MORTGAGE, made, by way of statutory transfer, the —— day of ——, 19—, BETWEEN C. D., of, &c., of the 1st part, A. B., of, &c., of the 2nd part, and E. F., of, &c., of the 3rd part, Supplemental to a Legal Charge [Mortgage] made by way of Statutory Mortgage dated, &c., and made, &c. (being a mortgage of lands at, &c., for securing £—— and interest),

Transfer of benefit of mortgage.

WITNESSETH that, in consideration of the sum of £——, now paid to the said C. D. by the said E. F. (being the mortgage money due in respect of the said Legal Charge [Mortgage], no interest being now due and payable thereon, of which sum the said C. D. hereby acknowledges the receipt), the said C. D., As Mortgagee, with the concurrence of the said A. B., who joins herein as covenantor, hereby conveys and transfers to the said E. F. the benefit of the said Legal Charge [Mortgage].

IN WITNESS, &c.

Effect of s. 118.

(*e*) The above is Form No. 3 in the Fourth Schedule to the L. P. Act, 1925, with an addition referring to the property comprised in the mortgage. With reference to a deed in this form, it is provided by s. 118 (3) that there shall also be deemed to be included, and there shall by virtue of the Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor, to the effect following, namely:—"That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest."

No. IV.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined.*(*f*) (*Legal Estate.*)

Parties.

THIS TRANSFER AND LEGAL CHARGE is made by way of statutory transfer and mortgage the —— day of —— 19—, BETWEEN C. D., of, &c., of the 1st part, A. B., of, &c., of the 2nd part, and E. F., of, &c., of the 3rd part, Supplemental to a Legal Charge [Mortgage], made by way of statutory mortgage, dated, &c., and made, &c. (being a mortgage of lands at, &c., for securing the sum of £—— and interest): WHEREAS:—

(1) A principal sum of £—— only remains due in respect of the said Legal Charge [Mortgage] as the mortgage money, and no interest is now due thereon:

(2) The said A. B. is seised in fee simple of the land comprised in the said Legal Charge [Mortgage] subject to that Charge [Mortgage]:

NOW THIS DEED WITNESSETH as follows:—

1. IN consideration of the sum of £——, now paid to the said C. D. by the said E. F. (the receipt of payment of which sum the said C. D. and A. B. hereby respectively acknowledge) (b), (*g*) the said C. D., As Mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said Legal Charge [Mortgage].

Transfer and conveyance of parcels to transferee.

2. FOR the consideration aforesaid the said A. B. (c), As Beneficial Owner, hereby charges by way of legal mortgage,

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(*f*) This is Form No. 4 in the Fourth Schedule to the L. P. Act, 1925, with respect to which s. 118 (4) provides, that if the deed of transfer is made in the Form No. 4 it shall, by virtue of the Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of its being designated a mortgage. In the Act the expression "Mortgage" includes a charge by way of legal mortgage.

Effect of s. 118.

(*g*) [*In case of further advance, after* "acknowledge" *at* (b) *insert* "and of the further sum of £——, now paid by the said E. F. to the said C. D., of which sum the said A. B. hereby acknowledges the receipt"; *at* (c) *before* "as Beneficial Owner" *insert* "As Mortgagor and" *as well as where A. B. is not the original mortgagor. And at* (d) *after* "of" *insert* "the sums of £—— and £——, making together."]

The Form No. 4 in the Fourth Schedule to the Act has the following footnote: *Variations to be made, as required, in case of the deed being made by endorsement, or in respect of any other thing.*

ALL the property comprised in the said Legal Charge [Mortgage], with the payment to the said E. F. on the —— day of —— 19—, of (d) the sum of £—— as the mortgage money with interest thereon at the rate of £— per cent. per annum.

IN WITNESS, &c.

No. V.

RECEIPT *on* DISCHARGE *of* STATUTORY LEGAL CHARGE *or* MORTGAGE (*h*) *to be endorsed thereon.* (*Legal Estate.*)

I, A. B., of, &c., hereby acknowledge that I have this —— day of —— 19—, received the sum of £—— representing the [aggregate] [balance remaining owing in respect of the] mortgage money secured by the [annexed] within- [above-] written Statutory Legal Charge [*or* Statutory Mortgage] [and by the Further Statutory Charge dated, &c., *or otherwise as required*], together with all interest and costs, the payment having been made by C. D., of, &c., and E. F., of, &c.

IN WITNESS, &c.(*i*)

Effect of s. 115.

(*h*) This is Form No. 5, given in the Fourth Schedule to the L. P. Act, 1925, and should be used where the legal charge or mortgage is, in the statutory form, given in that schedule, or in the Third Schedule to the Conv. Act, 1881. This form only differs from Form No. 2 in the Third Schedule (which applies to mortgages generally) by referring expressly to a "statutory legal charge" or to a "statutory mortgage." No harm would result by using Form No. 2 in the Third Schedule. See s. 115 (8), which refers expressly to statutory mortgages.

(*i*) The Form No. 5 has the following footnote: "If the persons paying are not entitled to the right of redemption state that they are paying the money out of a fund applicable to the discharge of the statutory legal charge or mortgage."

Part VI.

INSTRUMENTS RELATING TO MORTGAGES.

No. I.

MEMORANDUM *endorsed on* Mortgage *made before* 1926 *for* Converting *the* Mortgage *into a* Charge *by way of* Legal Mortgage.

We, the within-named E. M., of, &c., and F. M., of, &c. (*the present Mortgagees*), do this —— day of —— 19—, in the exercise of the power for this purpose conferred by section eighty-seven of the Law of Property Act, 1925, DECLARE that the within-written Mortgage is hereby converted into a charge by way of legal mortgage.

As witness our hands the day and year above-written.(*a*)

No. Ia.

APPOINTMENT *under the* Statutory Power *of a* Receiver *of the* Rents *of* Freeholds, Enfranchised Land *and* Leaseholds *comprised in a* Mortgage.

WHEREAS, by a Deed (hereinafter called the Mortgage) dated, &c., and made Between A. B., of, &c., of the one part, and me, the undersigned C. D., of the other part, certain freehold enfranchised copyhold and leasehold messuages, lands and property situated in the Parish of ——, in the County of ——, were conveyed, covenanted to be surrendered and demised, by the said A. B. to me, as to the said freeholds in fee simple, as to the said enfranchised lands (then copyhold, of the Manor of ——), to me and my heirs for a customary estate of inheritance, and as to the said leaseholds to me for the residue of the term of —— years from the —— day of —— subsisting therein (except the last three days thereof), by way of mortgage for securing payment

Mortgage.

(*a*) The power conferred by s. 87 (2) is exercisable by a mortgagee notwithstanding that he is a trustee or personal representative, see also T. Act, 1925, s. 5 (2). The power does not extend to a mortgage expressly made by demise or sub-demise.

The object of the conversion is to simplify future dealings.

Conversion

of the sum of £—— on the —— day of —— then next, with interest thereon at the rate of £— per cent. per annum :
[*Or where the Mortgage is made after* 1925—WHEREAS, by a Legal Charge (hereinafter called the Mortgage) dated, &c., and made, &c. (*as above*), the said A. B., charged by way of legal mortgage certain freeholds, enfranchised lands and leaseholds at ——, in the County of ——, with the payment to me on the —— day of —— then next (being the date fixed for the cesser of the legal right of redemption) of the principal sum of £—— with interest thereon at the rate of £— per cent. per annum :]

Principal money is due and interest in arrear.

AND WHEREAS the principal money secured by the Mortgage remains owing, and the interest (*b*) thereon has been in arrear for more than two months :
NOW, I, the undersigned C. D. :—

Appointment of receiver.

1. IN exercise of the power for this purpose conferred on me by sections one hundred and one and one hundred and nine of the Law of Property Act, 1925, and of all other powers (if any) me enabling, hereby appoint X. Y., of, &c. (hereinafter called the Receiver), to be the receiver of the rents and income of all the property comprised in the Mortgage, with all the powers conferred on a receiver by the said Act, and to the intent that he shall apply all money received by him in the manner directed by sub-section (8) of section one hundred and nine aforesaid.

Authority to retain commission.

2. I AUTHORISE the Receiver to retain for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission of £— per cent. (*c*) on the gross amount of all money received by him.

Direction to insure buildings.

3. I DIRECT him to keep the buildings on the premises insured against loss or damage by fire in the —— Insurance Office.

Delegation of leasing, &c., powers.

4. IN exercise of the powers for this purpose conferred on me by sections ninety-nine and one hundred of the said Act, I HEREBY DELEGATE to the Receiver the powers of leasing and accepting surrenders of leases respectively conferred by those

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Effect of appointment of receiver on statutory powers.

(*b*) A receiver must pay interest in arrear accruing as well before as after his appointment : *National Bk.* v. *Kenney* [1898], 1 Ir. R. 197. On the appointment of a receiver the statutory powers of leasing and accepting surrenders become exercisable by the mortgagee : L. P. Act, 1925, ss. 99 (19), 100 (13). This will in many cases save the mortgagee from having to go into possession, under those sections he can delegate those powers to the receiver. Under s. 109 (8) (v) he can direct the receiver to account for any balance to him in or towards discharge of the principal money.

(*c*) This must not exceed £5 per cent., see sub-s. (6).

sections [as extended by the Mortgage] and those powers shall be exercised in the name of the Estate Owner pursuant to section eight of that Act.

Obligation to account for balance.

5. In exercise of the powers for this purpose conferred on me by section one hundred and nine aforesaid, I direct that the Receiver shall, unless otherwise directed by me in writing, apply the balance of the money received by him (after making the payments mentioned in paragraphs (i) to (iv) of sub-section (8) of that section) in or towards discharge of the principal money secured to me by the Mortgage:

Provided that, before any such application of the balance is made, notice of the intended application shall be given to me.

As witness my hand this —— day of ——, 19—.

(Signed) C. D.

No. II.

APPOINTMENT *of a* Receiver contemporaneously *with the* Mortgage.(*d*)

Parties.

THIS RECEIVERSHIP DEED is made, &c., Between A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. M., of, &c., and D. M., of, &c. (hereinafter called the Mortgagees), of the 2nd part, and E. F., of, &c. (hereinafter called the Receiver), of the 3rd part: Whereas:—

Legal charge of even date.

(1) By a Legal Charge bearing even date with but executed before this deed, and made, &c., the property described in the Schedule hereto was charged by way of legal mortgage with the payment to the Mortgagees of the sum of £——, with interest thereon at the rate of £— per cent. per annum:

Agreement to appoint Receiver.

(2) It has been agreed that the Receiver shall be appointed receiver of the mortgaged property in the manner hereinafter appearing:

NOW THIS DEED WITNESSETH and it is hereby declared as follows:—

Borrower, with concurrence of mortgagee, appoints Receiver.

1. The Borrower, with the concurrence of the Mortgagees, hereby appoints the Receiver to be the receiver of the rents, profits and income of the property described in the Schedule hereto.

Power and duties of Receiver.

2. Subject to the provisions hereinafter contained the provisions of section one hundred and nine of the Law of Property Act, 1925, shall apply to the Receiver, and to any new

(*d*) See also Form No. 13, p. 77, if the receiver is to be appointed by the mortgage deed. See also notes to last Precedent.

receiver to be appointed in his place, in like manner as if the appointment hereby made had been an appointment made by the Mortgagees under section one hundred and one (*e*) of the said Act after the mortgage-money had become due.

Remuneration.

3. THE Receiver, and any future receiver, may retain, for his remuneration and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission of £— per cent. on the gross amount of all money received by him.

Insurance.

4. THE Receiver is hereby directed to keep the buildings on the premises insured against loss or damage by fire in the —— Insurance Office.

Receiver not to act until interest in arrear.

5. PROVIDED that the Receiver, or any future receiver, shall not exercise any of the powers hereby conferred on him unless and until some half-yearly payment of interest due under the recited Legal Charge, or some part thereof, shall have been in arrear for at least thirty days.

Leasing powers, &c.

6. AFTER the Receiver is entitled to act—

(1) The leasing powers and powers to accept surrenders of leases may be delegated to him by the Mortgagees pursuant to sections ninety-nine and one hundred of the said Act:

(2) The Mortgagees may direct the Receiver to apply the balance of the money received by him in accordance with paragraph (v) of sub-section (8) of section one hundred and nine aforesaid.

Definitions.

7. IN this deed the expressions "the Borrower" and "the Mortgagee" include the persons respectively deriving title under them.

IN WITNESS, &c.

THE SCHEDULE.

Particulars of the property comprised in the recited Legal Charge.

No. III.

TRUST DEED *in aid of a* MORTGAGE *to a* BANK *of a* LIFE INTEREST *in* SETTLED LAND *and of* LIFE POLICIES.(*f*) (*Equitable Interest.*)

Parties.

THIS TRUST DEED is made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of

(*e*) See sub-s. (1) (iii).

(*f*) This deed is intended to be used where the insurance money may not be sufficient to pay the interest as well as the principal money, and the mortgagees do not desire to go into possession. It was suggested by the late Lord Macnaghten.

the 1st part, the —— Bank, Limited, whose registered office is at —— (hereinafter called the Bank), of the 2nd part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 3rd part: WHEREAS:—

Mortgage of life interest and life policies to Bank.

(1) BY a Deed (hereinafter called the Mortgage) bearing even date with but executed before this deed, and made between the Borrower of the one part, and the Bank of the other part, the freehold property, subject to the limitations of a Deed (hereinafter called the Settlement) dated, &c., was demised to the Bank for an equitable term of ninety-nine years if the Borrower should so long live, and certain policies on the life of the Borrower were also assigned to the Bank by way of mortgage for securing payment to the Bank of the principal sum of £—— and interest thereon as therein mentioned: And the Mortgage contained a provision that no investment or application of capital money, for the time being affected by the Mortgage, should be made without the consent of the Bank except an investment in securities authorised by statute for the investment of trust money:(*g*) And as appears from the Mortgage, X. and Y. are the present trustees of the Settlement for the purposes of the Settled Land Act, 1925, and to whom notice of the Mortgage has been given in writing:

Vesting Deed.

(2) UNDER a Vesting Deed dated, &c., and made, &c., it appears that the legal estate in fee simple in the said freehold property was vested in the Borrower on the trusts of the Settlement:

(3) ON the treaty for the Mortgage it was agreed that the Borrower should make such assignment as hereinafter appearing: NOW, in pursuance of the said agreement and in consideration of the premises, THIS DEED WITNESSETH as follows:—

Borrower assigns mortgaged property and present and future arrears of rents, &c.(*h*) to Trustees.

1. THE Borrower, As Beneficial Owner, hereby assigns unto the Trustees:

FIRST, ALL AND SINGULAR the messuages, lands and property situated or arising in the Counties of ——, or in any of them or elsewhere, which are subject to the Mortgage,

AND SECONDLY, ALL arrears and proportions of rents, profits and income now due, or hereafter to become due, from the present

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(*g*) See S. L. Act, 1925, s. 104 (4) (*b*). In the case of registered land a priority caution would be lodged in the Minor Interests Index. Legal remedies.

(*h*) This will enable the trustees to recover any arrears of rent which may be owing at the mortgagor's death. As to the legal remedies of mortgagees of life interests and their right to production of deeds: S. L. Act, 1925, s. 111. As to an assignment operating to pass the possession: L. P. Act, 1925, s. 51. "Possession."

and future tenants and occupiers of the said property, and from all other persons liable to pay the same,

TO HOLD, as to the premises first hereinbefore described, unto the Trustees during the residue of the life of the Borrower, And as to the premises secondly hereinbefore described unto the Trustees absolutely, And as to the whole of the premises subject to the incumbrances mentioned in the Mortgage, and to the Mortgage, but Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

2. THE Trustees shall, out of the rents, profits and income of the premises :

Trustees to pay outgoings.

(1) IN the first place pay all rates, taxes, assessments and outgoings for the time being payable in respect of the premises, and which the respective tenants and occupiers thereof or any other person shall not be liable to pay, and the expense of insuring against loss or damage by fire any buildings or other property which the Trustees shall think fit to insure, and keep down, or concur with the Bank in keeping down, the interest on any principal money and any premiums on policies and yearly sums for the time being charged upon or payable out of the premises or any parts thereof in priority to the money secured to the Bank by the Mortgage (so far as such interest, premiums and yearly sums shall not be otherwise paid), but so nevertheless as not to give the same respectively any further or other security or priority than they already respectively enjoy :

Pay to Bank money owing.

(2) IN the next place, pay to the Bank the money due and payable to them under the Mortgage :

Surplus rents to Borrower.

(3) AND pay the surplus of the said rents, profits and income to the Borrower, or as he shall direct.

Power to appoint receiver.

3. THE Trustees may, at any time hereafter, by deed, appoint any person to be receiver of the rents, profits and income of the said property, with all such powers and authorities as are usually given to or can be exercised by a receiver appointed under the statutory power by mortgagees whose power of sale has arisen,(*i*) and also with all such further powers and authorities of manage-

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Distinction between power of sale arising and becoming exercisable.

(*i*) In accordance with the old practice the statutory power of sale "arises" in favour of a purchaser as soon as the mortgage money becomes due (generally six months from date of the mortgage), but, as between the mortgagor and mortgagee, one of the events in L. P. Act, 1925, s. 103, must have happened before the power is "exercisable," but a purchaser is not concerned either before or after conveyance to see that the power is duly exercised : *ib.*, s. 104. This would not prevent the court from restraining the sale before completion.

ment as the Trustees shall from time to time think fit to confer upon any such receiver, and the Trustees may at any time remove any such receiver and from time to time appoint another receiver in his place as the Trustees think proper, And every receiver so appointed shall be deemed to be the agent of the Borrower and the appointment shall have the like results as if made by the Bank under their statutory power.

To fix remuneration.

4. THE Trustees may, from time to time, in their absolute discretion, fix the amount of remuneration of any person appointed to be receiver as aforesaid, provided that such remuneration shall not exceed £5 per cent. on the gross money received by him.

Power not to be exercised by a sole Trustee.

5. THE foregoing power of appointing and removing a receiver shall be exercisable only when there shall be two Trustees hereof, but so that if at any time the number of Trustees hereof shall be reduced below two, the Bank or the Borrower, as the case may require, shall, at the request in writing of the other of them, forthwith, under the power for this purpose hereinafter conferred on them or him, appoint a new trustee hereof so as to make up the number of the trustees hereof to two, and if the Bank or the Borrower, as the case may be, shall fail to make such appointment within one month after being so requested by the other of them so to do, then, at the expiration of that time, the other of them shall have the power of making the appointment instead of the one of them who shall have made default :

PROVIDED, that except for the purpose of appointing or removing a receiver, nothing herein contained shall affect the right of a sole trustee to execute the trusts hereof.

Indemnity of Trustees.

6. THE Trustees shall in no case be answerable for any loss or misapplication of the said rents, profits and income, or any part thereof, by reason of any default, neglect or breach of trust by or on the part of any such receiver, nor for any other default whatsoever on the part of such receiver, but every such loss and misapplication shall be wholly borne and paid by the Borrower.

Further indemnity.

7. NOTWITHSTANDING the trusts hereinbefore declared, or any of them, the Trustees shall not be liable to the Borrower, nor to any other person, by reason of any failure or omission to insure against fire as aforesaid, nor be liable for any money whatsoever until the same shall have actually come into their hands.

Trustees to have discretion as to application of money received.

8. THE Trustees may, in their absolute discretion, out of any money for the time being in their hands, and held upon the trusts hereof, pay to or place to the credit of any agent or

manager of the settled land, or any part thereof, whether being the receiver appointed under the provisions hereof or any other person, whether appointed by the Trustees or not, any money which the Trustees may consider it desirable to pay for the purpose of the proper upkeep and management of the settled land, including any sums which the Trustees may think it desirable that any such agent or other person should have in hand for the purpose of such management, And the Trustees may accept without investigation and act upon the statement of any such manager or agent as to what sums are required for the purpose of such management and upkeep, or are proper to be kept in hand as aforesaid; and may accept any accounts furnished by any such receiver or other person accountable to them, or by any person employed or concerned in the agency or management of the settled land or any part thereof, as correct, without any further inquiry or examination, or may altogether dispense with the furnishing of any such accounts; and every account purporting to be delivered by any such receiver or other person shall, without any vouching or other verification thereof, be absolutely conclusive in favour and for the protection of the Trustees.

Discretionary powers as to management.

9. WITHOUT prejudice to any of the protections or indemnities hereinbefore given to the Trustees, they may, at their absolute discretion, adopt either of the following methods, or partly one and partly the other (that is to say):—

(1) The Trustees may either cause the entire gross rents and profits and income of the premises to be paid or remitted to them or to their account, and in that case may either themselves thereout pay or provide for the outgoings of the settled land, including the receiver's remuneration and the other payments hereinbefore made payable, in priority to the application of the said rents and profits, in the payment of the money for the time being due and payable to the bank on the security of the Mortgage, or:

(2) May pay to or place to the credit of the receiver or any other person or persons employed in the agency or management of the settled land, or of any part thereof, any money to enable any such outgoings and other payments to be paid or provided for by the said receiver or other person, and also thereout pay or place to the credit of any such receiver or other person such sums as it may be deemed expedient that any such receiver or other person should have in hand as aforesaid, or:

(3) The Trustees may allow any such outgoings and payments to be in the first instance paid and such sums in hand to be in the first instance retained by the receiver or other person or persons engaged in the agency or management of the settled land or any part thereof for the purposes aforesaid, and cause the balance only to be paid or remitted to the Trustees.

Money may be paid by Trustees to any account.

10. ANY money in the hands of or payable to the Trustees may be paid or caused to be paid by them to any account in their names at any bank, and in particular at the —— Bank (*the Bank of the mortgagees*), and no money paid into the said —— Bank to the account of the Trustees shall by reason only of such payment be deemed in any manner to go in or towards payment off or reduction of the amount for the time being owing to the Bank on the security of the Mortgage, nor shall such last-mentioned amount be deemed in any manner discharged or reduced except by payments expressly made by the Trustees to the Bank for the purpose of being applied in such payment off or reduction.

Bank need not require money received by Trustees to be applied in reduction of debt.

11. IT shall not be obligatory on the Bank to require any of the money so coming to or in the hands of the Trustees by virtue of this deed to be applied in paying off or reducing the amount for the time being owing to the Bank on the Mortgage; but it shall be absolutely in the discretion of the Bank whether and to what extent the money for the time coming to or in the hands of the Trustees shall be so applied, it being the intention hereof that the Bank shall be entitled at any time, if they think fit, to require the whole or any part of the said money to be applied in or towards payment off of the amount so for the time being owing to the Bank on the Mortgage (whether for principal, interest or otherwise), or shall be entitled to permit all or any part of the said money to be paid to the Borrower, notwithstanding that any principal or other money shall remain owing to the Bank on the security of the Mortgage without thereby in any way prejudicially affecting their security under the Mortgage.

As to payments of account to Borrower.

12. IN the event of any money in the hands of the Trustees being paid by them to any account of the Borrower personally at the said —— Bank, no money so paid to any such account of the Borrower shall be deemed in any nature to extinguish or reduce any indebtedness of the Borrower to the Bank on any account whatsoever, but so that this provision shall not prejudicially affect such right (if any) as the Bank would or might have in the absence of this provision of applying the credit balance

on any account of the Borrower in or towards satisfaction or reduction of any sum owing by the Borrower on any other account if and so far as the Bank may at any time in their discretion think fit so to apply the same.

Mortgagor's powers under S. L. Act not affected.

13. NOTHING herein or in the Mortgage contained affects the right of the Borrower to exercise any power conferred on him by the Settled Land Act, 1925, or any Act amending or extending the same, or any power conferred on him by the Settlement which takes effect by way of addition to the powers conferred by those Acts in relation to the property for the time being subject to the limitations of the Settlement in accordance with the reservations in section one hundred and four of the said Act:

PROVIDED that the Bank and the Trustees shall be entitled to have notice of intended transactions under paragraph (*c*) of sub-section (4) of the said section, but may from time to time accept general notice if they respectively think fit.

Power for professional trustees to charge.

14. ANY trustee being a solicitor or person engaged in any profession or business may be so employed and shall be entitled to charge and be paid for any business or act done by him in connexion with the trust, including any act which a trustee, not being a solicitor or other person engaged as aforesaid, could have done personally.

Appointment of new trustees.

15. THE power of appointing a new trustee or new trustees in the place of the said C. D. or of his successors in office shall be exercisable by the Bank, and the power of appointing a new trustee or new trustees in the place of the said E. F. or of his successors in office shall be exercisable by the Borrower.

Definition clause.

16. THE expressions "the Borrower" and "the Bank" shall, where the context admits, include the persons deriving title under them respectively.

IN WITNESS, &c.

No. IV.

AGREEMENT *for the payment of Costs by intending Borrower in reference to an intended* LOAN *on* MORTGAGE.(*j*) (*Equitable Interest.*)

Parties.

AN AGREEMENT, made the —— day of —— 19—, BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part,

When negotiation for loan on mortgage there

(*j*) When a negotiation has been entered into for the loan of money on mortgage, and it is contemplated that the investigation of the title will be attended with expense, it is prudent on the part of the intended mortgagee to have an agreement in writing, as, if the title should turn out defective,

and the —— Assurance Society, Limited, whose registered office is at —— (hereinafter called the Mortgagees), by ——, (*k*) their General Manager and Actuary, of the other part:

WHEREBY IT IS AGREED as follows:—

Agreement to advance.

1. The Mortgagees agree to advance to the Borrower the sum of £—— upon mortgage of the freehold and enfranchised lands, messuages and property situated in the Parish of ——, in the County of ——, short particulars whereof are contained in the Schedule hereto: Provided as follows—

(1) The Borrower shall, before the —— day of —— next, deduce a good marketable title to the property:

(2) The property (*l*) shall be valued by R. H., of, &c., or such other able practical surveyor as shall be appointed for that purpose by the Mortgagees, at the sum of £—— at least, clear of all outgoings, and shall be certified by such surveyor to be a good and sufficient security for the sum of £——:

(3) The said loan shall be made and the said Mortgage shall be completed on or before the —— day of —— next:

(4) Time shall be deemed of the essence of the contract.

Compensation agreement to be made.

2. (1) The Borrower shall, as soon as his title has in other respects been accepted by the Mortgagees, make all necessary arrangements with the lord of the manor of which the said enfranchised lands are held, for an extinguishment of the manorial incidents, either by a Compensation Agreement or by serving notice to determine the compensation:

(2) The compensation shall be paid in a gross sum and the amount thereof, with the costs of effecting the extinguishment, shall be advanced by the Mortgagees as part of the said loan on the deposit of the material documents of title:

(3) The Borrower shall use his best endeavours to obtain from the lord a release of his mineral and sporting rights, if any, so far as they affect the said lands.

As to provisions of Mortgage Deed.

3. (1) The principal money to be secured by the said Mortgage shall be made payable at the expiration of six months from the date thereof, and shall bear interest from the date thereof at the rate of £— per cent. per annum, payable half-yearly:

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or for any other reason the mortgage should not eventually be completed, there may, in the absence of an agreement, be a difficulty in recovering the expense incurred. Of course an agreement to make a future advance cannot be specifically enforced. The mortgagees may register a land charge in respect of this agreement, which is an "estate contract." should be agreement.

(*k*) As to companies acting by agents: L. P. Act, 1925, s. 74.

(*l*) This paragraph will be omitted where the intended mortgagee is satisfied as to the value, *cf.* Trustee Act, 1925, s. 8.

PROVIDED that if any temporary advance is made for effecting the extinguishment of the said manorial incidents the same shall carry interest at the rate aforesaid from the date of the advance :

(2) THE Mortgage shall be carried out by means of a charge by way of legal mortgage :

(3) THE Mortgage shall contain covenants by the Borrower for payment of the said principal money and interest, and shall also contain such powers and provisions as the Mortgagees shall reasonably require for better securing the payment of the principal money and interest :

(4) IN particular the Mortgage shall contain the following special provisions, namely—

(a) a covenant to insure buildings to the full value thereof in the —— Insurance Office in accordance with the requirements of the surveyor of the Mortgagees ;

(b) a provision requiring the consent of the Mortgagees to the exercise of the powers to lease and accept surrenders of leases ;

(c) a provision for reduction of the rate of interest to £— per cent. per annum on [continuous] punctual payment within thirty days of the half-yearly date for payment ;

(d) a mutual provision for leaving the mortgage debt on the security for seven years on the usual terms ;

(e) a covenant not to register a title under the Land Registration Act, 1925, without consent ;

(f) (*Add any other special terms agreed to.*)

Costs to be borne by Borrower.

4. ALL costs and expenses of and incidental to this agreement, the negotiations preparatory hereto and the Mortgage to be made pursuant hereto (including the investigation of the title [and the valuation of the premises]), shall be paid by the Borrower, whether the Mortgage shall eventually be completed or not, and whether such non-completion shall arise from [the property not being of sufficient value, or from] the title proving defective, or from any other cause whatever (not being the wilful default of the Mortgagees).

IN WITNESS, &c.

THE SCHEDULE.

FIRST PART.

Particulars of Freeholds.

SECOND PART.

Particulars of Enfranchised Land

No. V.

AGREEMENT *for an* ADVANCE *on* MORTGAGE, *with* PROVISIONS *for the* APPOINTMENT *of a* RECEIVER. (*Equitable Interest.*)

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Mortgagees), of the other part : Parties.

WHEREBY IT IS AGREED as follows :— Agreement for advance, &c.

1—3. (*As in last Precedent.*)

4. THE Mortgagees may, by a deed to be executed simultaneously with the Mortgage, appoint a receiver of the rents and profits of the premises, with such powers and duties as the Mortgagees may think fit, for the purpose of better securing the payment of interest, and in like manner as if the statutory power of sale had arisen and with such clauses and provisions for removing the receiver, and appointing new receivers from time to time, and otherwise, as are usually inserted in deeds of the like nature, including a proviso that the receiver shall not act until interest shall have become in arrear for at least thirty days ; And the Borrower shall (if required) join in such receivership deed. Mortgagees may appoint a receiver.

5. ALL costs and expenses (*continue as in clause* 4 *of last Precedent*). Costs to be borne by Borrower.

IN WITNESS, &c. (*Add Schedule in two parts as in last Precedent.*)

No. VI.

AGREEMENT *by a* MORTGAGEE *to* CONCUR *in* SALES, *the* PURCHASE-MONEY *being* DEPOSITED. (*Equitable Interest.*)

AN AGREEMENT, &c., BETWEEN A. B., of, &c. (hereinafter called the Mortgagee), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part : Supplemental to a Legal Charge (hereinafter called the Principal Deed) dated, &c., and made, &c., being a charge by way of legal mortgage of certain property at ——, for securing payment by the Borrower to the Mortgagee of the principal sum of £——, with interest thereon as therein mentioned : Parties. Mortgage.

WHEREBY IT IS AGREED as follows:—

Mortgagee to concur.

1. THE Mortgagee shall, at the request and cost of the Borrower, concur in sales to be made by the Borrower of the mortgaged property in Lots or otherwise at a price to be approved by the surveyor for the time being of the Mortgagee, and upon the terms that all purchase-money shall be paid to the Mortgagee to be dealt with by him as hereinafter provided.

Money to be deposited.

2. ALL purchase-money received by the Mortgagee from sales of the several Lots of the mortgaged property shall, as and when received by him, be deposited in his name, at the current rate of interest allowed where fourteen days' notice of withdrawal is to be given, in the —— Bank at the risk of the Borrower, but there shall be first deducted out of such purchase-money, when received and before deposit thereof as aforesaid, such sums (if any) as the Mortgagee or his solicitors may think proper to allow from time to time in respect of the costs and expenses of sale, and the sum so deducted shall be applied by the Mortgagee in payment to his own solicitors and to the solicitors of the Borrower of their respective costs, of and incidental to the sales, including the costs of the surveyor of the Mortgagee, and such deduction and payment shall be allowed by the Borrower as a proper deduction and payment by the Mortgagee.

Interest to be withdrawn.

3. THE interest allowed on the deposit shall, from time to time, on each half-yearly day fixed for payment of interest under the Principal Deed, be withdrawn and taken by the Mortgagee in or towards payment of the interest due under the Principal Deed.

Mortgagee to give information.

4. THE Mortgagee shall, when requested, inform the Borrower from time to time of the amount standing on deposit.

Deposit exceeding specified amount may be paid to Mortgagee.

5. (1) THE Borrower may, when the amount on deposit (irrespective of interest) is equal to or exceeds the sum of £——, at any time give to the Mortgagee notice in writing to accept payment of a sum, not less than the said sum of £——, and being a multiple of £100, out of the amount standing on deposit, in or towards discharge of the principal of the mortgage debt.

(2) THE Mortgagee shall, at or before the expiration of [*three*] months from the date of such notice, and on receiving from the Borrower all arrears (if any) of interest due under the Principal Deed up to the last half-yearly day for payment of interest, and also any further interest due on the sum named in such notice up to the withdrawal thereof, withdraw for his own use

that sum from the amount standing on the deposit account and accept payment of the same on account of the principal of the mortgage debt.

Deposit not to be payment to Mortgagee.

6. UNTIL withdrawal and acceptance from time to time can duly take effect under the last preceding clause the Mortgagee shall not be deemed to have received out of the net proceeds of sales any money in discharge of the principal of the mortgage debt, but interest shall continue to be paid on the mortgage debt, or on so much as is not for the time being duly discharged by withdrawal and acceptance under this agreement, or is not otherwise duly discharged, and such mortgage debt and the interest thereon shall be a charge on the mortgaged property for the time being remaining unsold in the same manner and to the same extent as if no money arising from the proceeds of sales were standing in the name of the Mortgagee on a deposit account as aforesaid.

Agreement to bind successors in title.

7. THIS agreement shall be binding on the persons respectively deriving title under the Borrower and the Mortgagee.

IN WITNESS, &c.

No. VII.

CONSENT *by a* MORTGAGEE *to a* LEASE *or the acceptance of a Surrender to be made by* BORROWER *under Section* 99 *or to be accepted by him under Section* 100 *of the L. P. Act*, 1925, *there being a proviso in the Mortgage Deed requiring such consent* [*And* AGREEMENT *extending the powers of the Act of* 1925 *to a* MORTGAGE *executed before* 1926].

AN AGREEMENT is made, &c., BETWEEN A. M., of, &c. (hereinafter called the Mortgagee), of the one part, and C. D., of, &c. (hereinafter called the Borrower), of the other part: WHEREAS:—

Mortgage.

(1) By a Deed (hereinafter called the Mortgage) dated, &c., and made between the Borrower of the one part, and the Mortgagee of the other part, a messuage, known as, &c., was conveyed by the Borrower to the Mortgagee in fee simple by way of mortgage for securing payment of the sum of £——, with interest thereon: And the Mortgage contained a provision that no lease [or acceptance of a surrender] made [or accepted] by the Borrower or the persons deriving title under him during the continuance

of the said security should take effect by virtue of the statutory powers, unless the Mortgagee or the persons deriving title under him should consent thereto in writing, and by virtue of the Law of Property Act, 1925, the said property is now vested in the Mortgagee for a term of 3,000 years, without impeachment of waste, subject to cesser on redemption under the Mortgage, and the fee simple therein is vested in Borrower, subject to the said mortgage term :

Borrower desires to make Lease.

(2) The Borrower is desirous (*m*) of [accepting a surrender of the existing Lease of the premises and of] granting a Lease of the said messuage to G. H., of, &c., for a term of —— years at the yearly rent of £——, and has requested the Mortgagee to give his consent thereto :

NOW IT IS HEREBY AGREED AND DECLARED as follows :—

Consent by Mortgagee.

1. THE Mortgagee hereby consents to the proposed [acceptance of a surrender of the existing Lease and to the grant of the new] Lease, provided that the Lease is made in accordance in all respects with the provisions of section ninety-nine of the Law of Property Act, 1925, and of section one hundred of that Act (*n*) [*or* notwithstanding that such Lease will not comply with the provisions of section one hundred of that Act] :

Application of L. P. Act, 1925.

2. [THE provisions of the Law of Property Act, 1925, shall apply to the Mortgage as if the same had been executed after the commencement of that Act, but the statutory powers of accepting surrenders of leases shall be exercisable by the Borrower or the persons deriving title under him only with the like consent as under the Mortgage is required on the exercise of the statutory powers of leasing.]

AS WITNESS, &c.

Leasing powers.

(*m*) This Precedent may be made applicable to several leases, particulars of which can be stated in a schedule. Under L. P. Act, 1925, s. 99, an agricultural or occupation lease may be made for twenty-one years or, if the mortgage is made after 1925, for fifty years, and a building lease may be made for ninety-nine years or, where the mortgage is made after 1925, for 999 years. In the case of leasehold land the lease must reserve a reversion of not less than one day. The provisions of the section may be extended by an agreement in writing to a mortgage made before 1926, see sub-s. (16).

Restrictions on grant of a new lease on the acceptance of a surrender.

(*n*) This section imposes further restrictions on the terms to be granted by the new lease where a lease or part of the property comprised in a lease has been surrendered under that section. In some cases the mortgagee will be asked to waive some of these restrictions.

No. VIII.

AGREEMENT (*o*) *between* MORTGAGOR *and* TWO MORTGAGEES *of different properties as to* DOCUMENTS *relating to both properties which have been delivered to* ONE *of the* MORTGAGEES. ACKNOWLEDGMENT *of the right of the* OTHER MORTGAGEE *to production, and* AGREEMENT *that* DOCUMENTS *shall be delivered to him if his Mortgage is subsisting when the other is paid off.* (*p*)

Parties.

AN AGREEMENT made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the 1st part, C. D. (hereinafter called the X. Mortgagee), of, &c., of the 2nd part, and E. F. (hereinafter called the Y. Mortgagee), of, &c., of the 3rd part: WHEREAS:—

Mortgages.

(1) By a Legal Charge bearing even date with but executed before this agreement, and made between the Borrower of the one part and the X. Mortgagee of the other part, certain property at X., in the County of ——, was charged by way of legal mortgage, for securing payment to the X. Mortgagee, of the principal sum of £—— and interest:

(2) By another Legal Charge of even date, made between the Borrower of the one part and the Y. Mortgagee of the other part, certain property at Y., in the County of ——, was charged by way of legal mortgage with the payment to the Y. Mortgagee of the principal sum of £—— and interest:

Documents in schedule have been delivered to one of the Mortgagees.

(3) The documents mentioned in the Schedule hereto relate to properties comprised in both the said Mortgages and those documents have been delivered to the X. Mortgagee, subject to the arrangement hereinafter appearing:

(*o*) This will require a 6*d.* agreement stamp. A mortgagee who does not obtain the possession of the material title deeds should register a land charge, unless the mortgage is registered by way of memorial in a local deeds register.

What arrangement should be made as to custody of documents.

(*p*) If two different properties, held under the same title, are mortgaged at the same time to two different mortgagees, it is necessary to make some arrangement respecting the custody of the documents. They may either be delivered to one mortgagee, he giving to the other an acknowledgment of the right to production, as is done in the above Precedent, or they may be delivered to a firm of solicitors or bankers acting for both mortgagees or sets of mortgagees, and this is the plan adopted in the next Precedent.

If documents relate to other land retained by the mortgagor, he should obtain a separate acknowledgment of his right to production when he hands them to a mortgagee. When he disposes of such land or a part thereof he can then either hand over the acknowledgment or give the purchaser a right to production of it.

Acknowledgment by one Mortgagee.

1. NOW, the X. Mortgagee hereby acknowledges the right of the Y. Mortgagee to production of the documents mentioned in the Schedule hereto and to delivery of copies thereof.

Documents to be delivered to other Mortgagee if his Mortgage is subsisting when the other is satisfied.

2. IT IS HEREBY AGREED that if the Mortgage first hereinbefore recited shall be paid off and satisfied while any money remains owing to the Y. Mortgagee, or the persons deriving title under him on the Mortgage secondly hereinbefore recited, then and in such case the said documents shall be delivered to him or them.

AS WITNESS, &c.

THE SCHEDULE.

Particulars of documents retained in the custody of the X. Mortgagee.

(*The dates and parties only will be inserted.*)

No. IX.

MEMORANDUM *that* DOCUMENTS *are held by* SOLICITORS (*q*) *on behalf of* TWO SETS *of* MORTGAGEES *of different* PROPERTIES.

That documents relate to two properties mortgaged to different persons, and are in possession of solicitors on behalf of both sets of Mortgagees.

WHEREAS the documents mentioned in the Schedule hereto relate—FIRST, to certain property at, &c., belonging to A. B., of, &c. (*Mortgagor*), and by him mortgaged to C. D., of, &c., and E. F., of, &c. (*Mortgagees*), by a Legal Charge bearing even date herewith to secure £—— and interest, and SECONDLY, to certain other property at, &c., belonging to the said A. B., and by him mortgaged to G. H., of, &c., and I. K., of, &c. (*other Mortgagees*), by another Legal Charge bearing even date herewith to secure £—— and interest:

NOW, we, the undersigned, Messrs. —— & ——, hereby admit that the said documents are in our custody as solicitors for and on behalf of the said C. D. and E. F., and also for and on behalf of the said G. H. and I. K., as such Mortgagees respectively as aforesaid.

Dated the —— day of ——, 19—.

THE SCHEDULE.

(Signed) —— & —— (*Solicitors*).

Land charge.

(*q*) If the firm act regularly for both sets of mortgagees, it may not be necessary for either set to register a land charge.

No. X.

NOTICE *to a* FIRST MORTGAGEE *of the creation of a* SECOND MORTGAGE.(*r*)

To C. D. (*First Mortgagee*) and all others whom it may concern:

WE HEREBY GIVE YOU NOTICE, that by a Legal Charge dated, &c., and made, &c. (*date and parties*), the lands and property situated in the Parish of ——, in the County of ——, in mortgage to you from the said A. B. (*Mortgagor*), have been charged by him by way of legal mortgage to the said E. F. (*Second Mortgagee*) to secure £—— and interest.

Dated the —— day of ——, 19—.

(Signed) ——,

Solicitors for the above-named E. F.

No. XI.

NOTICE *to* INSURANCE COMPANY *of* ASSIGNMENT *of a* POLICY *by way of Mortgage.*(*s*)

To the —— Assurance Company:

WE HEREBY GIVE YOU NOTICE, that by a Deed dated, &c., and made, &c. (*date and parties*), a policy of assurance effected with you by the said A. B. on his life for the sum of £——, dated the —— day of ——, 19—, and numbered ——, was assigned by the said A. B. to the said C. D. by way of mortgage: And we request you to deliver to us a written acknowledgment of the receipt of this Notice.(*t*)

Dated the —— day of ——, 19—.

(Signed) ——,

Solicitor for the said C. D.

(*r*) In this case the second mortgagee must register a land charge: L. P. Act, 1925, s. 97, save where the title to the land is registered under the L. R. Act, 1925, or the land is wholly within the jurisdiction of a local deeds register and a memorial is registered. Land charge.

(*s*) See the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144), s. 3. In practice the companies recommend that the acknowledgment should be required on a duplicate copy of the notice to be furnished by the assignee. This form may be used where the assignment is absolute, omitting the words "by way of mortgage." See also L. P. Act, 1925, ss. 136–137. Notice of assignment of policies.

(*t*) A fee not exceeding 5*s.* will be payable for the acknowledgment: Act of 1867, s. 6.

No. XII.

NOTICE *of* ASSIGNMENT *by way of Mortgage of a* LIFE *or* REVERSIONARY INTEREST *in settled Property to the* TRUSTEES *of the Fund* (*u*) *or to the* S. L. ACT TRUSTEES.

To L. M. and N. O., the Trustees of a Deed, dated the —— day of ——, 19—, being a Settlement made on the marriage of —— [*or*, being a Resettlement of the —— Estates] [*or*, the Trustees of the Will dated —— of ——, deceased], and all others whom it may concern :

WE HEREBY GIVE YOU NOTICE, that by a Deed dated, &c., and made, &c., the life interest in possession of [*or*, reversionary share of] the said A. B. (*Mortgagor*) [*or*, life interest of the said A. B. in reversion expectant on the death of ——] [*or*, the fee simple in remainder of the said A. B. expectant on the death of ——] in the [husband's *or* wife's] trust fund comprised in the said Settlement [*or*, in the property representing the residuary estate of the said ——] [*or*, in the property (other than advowsons and heirlooms) subject to the trusts of the said Resettlement], or in, &c. (*following the language of the Mortgage Deed*)] was assigned [and in the case of land demised for 99 years, if the said A. B. should so long live] by him to the said C. D. (*Mortgagee*), by way of mortgage for securing payment of £—— and interest [*or*, was charged with the payment to the said C. D. of the money therein mentioned, or, &c. (*according to the terms of the mortgage deed*)].

Notices.

(*u*) This form may be used where the assignment is absolute, omitting the words " by way of mortgage, &c." If the mortgage is of a life interest or remainder in land, notice to the S. L. Act trustees is required, not only because they might part with capital money arising from the land to the wrong person, but after 1925 because the notice is required to secure priority : L. P. Act, 1925, s. 137.

Trust corporation.

If a trust corporation has been appointed to receive notices under s. 138, then a similar notice must be given to that corporation.

Registered land.

If the minor interest dealt with affects registered land an application must be made to the Land Registrar, in the case of a mortgage to register a Priority Caution in the Minor Interests Index ; and in the case of an absolute assignment to register a Priority Inhibition in that Index.

Writing.

Whatever notice is requisite under s. 137, it must be in writing, and it is generally expedient to serve it in duplicate and ask for a receipt. Where a remainderman is dealing with his interest it may in some cases be expedient also to give notice to the estate owner as well as to the S. L. Act trustees, though this is not made essential.

Endorsement of notices.

Under that section provision is made for the endorsement of a notice on the trust instrument whenever it is not otherwise practicable to give a valid notice. And see as to notice generally : 1 Wolst. & Cherry, 11th ed., 357–369.

And we request you to forward to us a written acknowledgment of the receipt of this Notice.

Dated the —— day of ——, 19—.

(Signed) ——,
Solicitors for the above-named C. D.

No. XIII.

NOTICE *by* MORTGAGEE *to* TENANT *not to pay rent to* BORROWER.

To C. D., of, &c., the tenant or occupier of the property known as ——, and to all others whom it may concern:

I, X. Y., of, &c., HEREBY GIVE YOU NOTICE, that by a Legal Charge dated the —— day of ——, and made between A. B., of, &c., of the one part, and me of the other part, the house and land situated at ——, and now in your possession, were charged in my favour by the said A. B. by way of legal mortgage for securing the principal sum of £—— and interest thereon, and that under the said Charge the said principal sum remains owing, together with an arrear of interest thereon.

I therefore require you to pay to me the rent now and hereafter to accrue due in respect of the premises, and on no account after the date hereof to pay any rent in respect of the premises to the said A. B. or to any persons other than myself or the persons deriving title under me or my agent.(*v*)

AND I request you to forward to me a written acknowledgment of the receipt of this Notice.

AS WITNESS my hand the —— day of ——, 19—.

X. Y. (*Mortgagee*).

No. XIV.

NOTICE *by* BORROWER *of intention to* PAY OFF *at the expiration of* SIX MONTHS.(*w*)

To C. D., of, &c. (*Mortgagee*):

I, A. B., of, &c., HEREBY GIVE YOU NOTICE that, at the expiration of six months from the date hereof, I intend to pay

(*v*) Under L. P. Act, 1925, s. 87, a legal chargee has the same powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents) as if he had a mortgage term.

(*w*) If the mortgagor makes default in payment at the expiration of the notice, interest must be paid or a new notice given: *Bartlett* v. *Franklin* (1867), 36 L. J. Ch. 671; and see *Johnson* v. *Evans* (1890), 61 L. T. 18.

As to notices by Mortgagor.

the principal money and interest due and owing to you from me, on the security of a Legal Charge [*or* Mortgage] dated, &c., and made between me of the one part, and you of the other part (and on the security of a Further Charge dated, &c.).

AND I request you to forward to me a written acknowledgment of the receipt of this Notice.

AS WITNESS my hand this —— day of ——, 19—.

A. B. (*Mortgagor*).

No. XV.

NOTICE *by* MORTGAGEE *to* BORROWER *requiring* PAYMENT, *with a view to exercise* POWER *of* SALE *in case of* DEFAULT.(*x*)

To C. D., of, &c. (*Mortgagor*), and all others whom this Notice may concern :

I, A. B., of, &c., HEREBY REQUIRE YOU to pay to me forthwith the principal sum of £——, secured by a certain Deed dated the —— day of ——, and made between you of the one part, and me of the other part [and by a Further Charge dated, &c.], and all interest (*y*) due thereon : And I hereby give you notice that if the same is not paid within three months after the service hereof I shall proceed to sell the mortgaged property.(*z*)

AND I request you to forward to me a written acknowledgment of the receipt of this Notice.

AS WITNESS my hand this —— day of ——, 19—,

A. B. (*Mortgagee*).

Notices by Mortgagees.

(*x*) The notice cannot be validly served till after the mortgage money has become due : *Selwyn* v. *Garfit* (1888), 38 Ch. D. 273 ; 57 L. J. Ch. 609 ; and see *Barker* v. *Illingworth* [1908], 2 Ch. 20 ; 77 L. J. Ch. 581. Where the mortgagee has given notice requiring payment of the money the mortgagor may, at any time, whether on or after the expiration of the notice, tender the money with interest to date of tender. If the time named in the notice by the mortgagee has expired, the mortgagor need not give any counter notice, or pay interest in lieu of notice : *Edmondson* v. *Copland* [1911], 2 Ch. 301 ; 80 L. J. Ch. 532. To avoid paying intermediate interest until actual payment to the mortgagee the mortgagor should keep the money ready or, if there are any proceedings before the court, pay the money into court. If the mortgagor makes any profit on the money he must account for such profit to the mortgagee : S.C. As to the power of sale, see L. P. Act, 1925, s. 103 (i) ; 1 Wolst. and Cherry, 11th ed., 312-313.

Interest.

(*y*) The interest is only payable up to date of payment if the mortgagor pays off pursuant to the notice : *Bovill* v. *Endle* [1896], 1 Ch. 648 ; 65 L. J. Ch. 542.

Withdrawal.

(*z*) The notice cannot be withdrawn without the consent of the mortgagor : *Santley* v. *Wilde* [1899], 1 Ch. 747 ; 68 L. J. Ch. 681 (reversed on another point [1899], 2 Ch. 474).

No. XVI.

NOTICE (*a*) *by* MORTGAGEE *of intention to exercise* POWER *of* SALE, *to be left on the property, it not being known where the* BORROWER *is, or whether he is living.*(*b*)

To C. D. (*Mortgagor*), if living, or his personal representatives, and all other persons whom this Notice may concern.

I, A. B., of, &c., HEREBY REQUIRE the payment to me of the principal sum of £——, secured by a Deed dated, &c., and made, &c. (*state parties*), and all interest due thereon:

And I give notice that if the same is not paid to me within three months after the service of this Notice I shall proceed to sell the mortgaged property.

AS WITNESS my hand this —— day of ——, 19—.

A. B. (*Mortgagee*).

No. XVII.

NOTICE *by an* URBAN DISTRICT COUNCIL *requiring* PAYMENT *of a* SUM *of* MONEY *charged on property for* PRIVATE STREET WORKS *with a view to exercise* STATUTORY POWER OF SALE *in case of* DEFAULT.

In the matter of the Private Street Works Act, 1892 (as amended).

To A. B., of, &c., the owner of the property known as —— (*describe the property shortly*), and to all other persons interested therein.(*c*)

WHEREAS:—

(1) Certain private street works have been executed by the Urban District Council of ——, in a certain street known as ——, in the Parish of ——, in the County of ——, pursuant

Proceedings under Act.

(*a*) See first note to last Precedent.

(*b*) See L. P. Act, 1925, s. 196, as to notices served under that Act. That section now extends also to notices required to be served by any instrument affecting property coming into operation after 1925. Notices.

(*c*) This notice should be served on the "owner," as defined by the P. H. Act, 1875, and on all other persons known or believed to have an interest—*e.g.*, where the owner is a leaseholder, on the persons entitled to the freehold, and the notice should also be affixed to the premises. Mortgagees in possession are "owners": *Maguire* v. *Leigh-on-Sea U. D. C.* [1906], 95 L. T. 319. The "owner," when the work is completed, is liable: *East Ham U. D. C.* v. *Aylett*

to and in accordance with the provisions of the Private Street Works Act, 1892, as amended by the Public Health Act, 1925.

(2) By the final apportionment of the expenses of the said works made by the surveyor to the said Council and dated the —— day of ——, 19—, the sum of £—— was charged on the above-mentioned property as the share of expenses payable in respect thereof and a local land charge has been registered in respect of that sum pursuant to section fifteen of the Land Charges Act, 1925 : (*d*)

(3) A notice in writing of the said final apportionment was served on the owners of the property affected thereby as required by the said Act, and in particular such notice was served on you, the above-named A. B., on the —— day of ——, 19— :

(4) No objection was made to the said final apportionment by the owner of any premises charged with any expenses thereunder :

(5) The whole of the said sum of £—— charged on the above-mentioned property as aforesaid still remains owing with interest thereon at the rate of £4 per cent. per annum from the date of the said final apportionment :

Notice that payment is required, and that in

NOW, the said Urban District Council of —— hereby REQUIRE payment of the said sum of £—— and all interest due or to become due thereon, and GIVE NOTICE that if the same be not

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[1905], 2 K. B. 22 ; 74 L. J. K. B. 471 ; and see *Millard* v. *Balby, &c., Council* [1905], 1 K. B. 60 ; 74 L. J. K. B. 45. Expenses cannot be recovered unless a copy of the resolution of the local authority approving the provisional apportionment has been served upon the owner : *Wirral Rural Council* v. *Carter* [1903], 1 K. B. 646 ; 72 L. J. K. B. 332.

The P. H. Act, 1925, s. 35, gives to local authorities power to vary the width of a carriageway and footway on making up a private street.

The rate of interest recoverable by a local authority under ss. 213 or 257 of the P. H. Act, 1875 (relating to improvement rates and the recovery of expenses from the owner of premises), and under ss. 13 or 14 of the P. S. W. Act, 1892, has been varied by the P. H. Act, 1925, s. 77.

Local land charges.

(*d*) Under L. C. Act, 1925, s. 15, a general charge can be registered when the money is expended. After the charge is allotted (which it would not be if previously discharged), it can be registered as a specific charge as of the date on which the general charge was registered. The expression " land charge " includes a local land charge : *ib.*, s. 20 (7). The provisions of the Act relating to land charges, Class B, apply to local land charges : s. 15 (2), unless it is a restriction within sub-s. (7). Under s. 11 a land charge of that class for securing money when registered, takes effect as if it had been created by a deed of charge by way of legal mortgage, as to which, see L. P. Act, 1925, ss. 87–89, 101–107 ; but the old statutory power of sale is also kept on foot : *ib.*, s. 7 (3) (*c*).

Power of sale.

paid within three months after the service hereof the Council will proceed to sell the property under the statutory power for that purpose. default of payment within three months premises will be sold.

Given, &c. (*Common seal of Council.*)

No. XVIII.

ENDORSEMENT *by* STEWARD *of the* MANOR.

FORM OF ENDORSEMENT PRESCRIBED BY THE ENFRANCHISED LAND (CERTIFICATE OF ENDORSEMENT) REGULATIONS, 1925.

I, ——, the steward of the Manor of ——, in the Parish of ——, in the County of ——, in pursuance of the provisions of section one hundred and twenty-nine of the Law of Property Act, 1922, hereby certify that the within-written assurance of [an interest in] enfranchised land held of the said Manor was produced to me before the expiration of [six months from the date of its execution] [the extended period allowed by Order of the Court dated —— day of ——, 192—].

—— , 19—.

Signature of Steward.

FORM OF STAMP.

Produced as required by section 129 of the Law of Property Act, 1922.

Steward of the Manor.

—— , 19—.

CHAPTER II.

Personal Chattels; Bills of Sale, &c.

Sect. I.—*The modes of transfer of personal chattels.*

Modes of transfer of personal chattels.

The property in personal chattels may be transferred by actual delivery, by a contract for sale, or by deed or writing not being a contract for sale.

Parol gift void.

A *gift* of chattels must be by delivery or deed. A parol gift without delivery is void: *Cochrane* v. *Moore* (1890), 25 Q. B. D. 57; 59 L. J. Q. B. 377.

Delivery: what is sufficient.

Where actual delivery of the articles which are the subject of the gift is impossible or inconvenient, a delivery of some symbol of possession will be sufficient, as, where the goods are in a warehouse, a delivery of the key: *Ryall* v. *Rowles* (1749), 1 Ves. Sen. 348, 366. The marking of the goods by the purchaser has been also held to be a delivery and taking possession: *Ellis* v. *Hunt* (1789), 3 T. R. 464. If goods are in the custody of a third person, an agreement between the owner and a purchaser or mortgagee that the goods shall belong to the latter, either absolutely or by way of security, if notified to the custodian, and assented to by him, is equivalent to delivery.(*a*)

Constructive delivery.

Contract for sale may be in writing or by parol.

Contract for sale of goods of value of £10 not enforceable unless certain conditions are observed.

By the Sale of Goods Act, 1893, a contract for the sale of goods (which term includes all personal chattels other than money and things in action): s. 62 (1), may be made in writing (either with or without seal), or by word of mouth: s. 3. But a contract for the sale of any goods of the value of £10 or upwards is not enforceable by action, unless the buyer accepts part of the goods so sold, and actually receives them, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf.(*b*)

(*a*) *Hilton* v. *Tucker* (1888), 39 Ch. D. 669; 57 L. J. Ch. 973; and see *Charlesworth* v. *Mills* [1892], A. C. 231; 61 L. J. Q. B. 830; *Rawlinson* v. *Mort* (1905), 93 L. T. 555.

(*b*) S. 4; and see *Prested, &c., Co.* v. *Garner* [1911], 1 K. B. 425; 80 L. J. K. B. 819; *Nicholls* v. *White* (1910), 103 L. T. 800.

When property in goods the subject of a contract passes to buyer.

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred, and one of the rules for ascertaining the intention is, that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in them passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed: ss. 17, 18.

Sale by person not the owner.

The law with respect to sales, pledges, or other dispositions of goods by a person who is not the owner is contained in the following enactments:—

Sale of Goods Act, 1893, s. 21:

Purchaser acquires no better title than vendor except in certain cases.

Subject to the provisions of the Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. But nothing in the Act affects the provisions of the Factors Acts or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof, or the validity of any contract of sale under any special common law or statutory power of sale, or under the order of a Court of competent jurisdiction.(*c*)

Sale in market overt.

Section 22.—Where goods are sold in market overt (*d*) according to the usage of the market, the buyer acquires a good title to the goods, provided that he buys them in good faith and without notice of any defect or want of title on the part of the seller.

Where seller has voidable title.

Section 23.—Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.(*e*)

Factors Act, 1889, s. 2:

Powers of mercantile agent with respect to disposition of goods.

Where a mercantile agent (*f*) is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same: provided that the person taking under the disposition acts in good faith, and has not, at the time of the disposition, notice that the person making the disposition has not authority to make the same.

(*c*) See *Farquharson* v. *King* [1902], A. C. 325; 71 L. J. K. B. 667.

(*d*) See *Clayton* v. *Le Roy* [1911], 2 K. B. 1031; 81 L. J. K. B. 49.

(*e*) See *Whitehorn* v. *Davison* [1911], 1 K. B. 463; 80 L. J. K. B. 425.

"Mercantile agent."

(*f*) For definition of "mercantile agent," see s. 1; see also *Oppenheimer* v. *Attenborough* [1907], 1 K. B. 510; 76 L. J. K. B. 177; *Oppenheimer* v. *Fraser* [1907], 2 K. B. 50; 76 L. J. K. B. 806; *Weiner* v. *Harris* [1910], 1 K. B. 285; 79 L. J. K. B. 342.

Sale of Goods Act, 1893, s. 25 : (*g*)

Disposition by seller remaining in possession.

Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, has the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Disposition by buyer obtaining possession.

Where a person having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement, for sale, pledge, or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Whether possession under a hire-purchase agreement is within this enactment.

If a person who has been put into possession of an article under a hire-purchase agreement sells or pledges it before all the instalments are paid, the question whether he is to be deemed a person who has agreed to purchase the article, so as to bring the case within this enactment, depends on the terms of the agreement : *Brooks* v. *Beirnstein* [1909], 1 K. B. 98, 101 ; 78 L. J. K. B. 243. If by the agreement he is bound to go on paying any rent or instalments until the payments amount to the purchase-money, the section applies.(*h*) If by the agreement he is at liberty to terminate the hiring at any time before the purchase-money has been paid, the section does not apply : *Helby* v. *Matthews* [1895], A. C. 471 ; 64 L. J. Q. B. 465.

Assignment by deed or writing, usually called a bill of sale.

An assignment of chattels by deed or writing is unusual, except where the grantor retains the possession. In that case the assignment, whether the transaction be a sale or not, is usually called a bill of sale. A bill of sale may be by way of absolute transfer or by way of mortgage to secure payment of money.

Stamp duty on sale.

An agreement, letter, or memorandum, for or relating to the sale of goods, wares, or merchandise, is exempted from stamp duty : Stamp Act, 1891, Schedule, "Agreement" ; but an absolute bill of sale is chargeable with stamp duty as a conveyance

(*g*) This section is a re-enactment of ss. 8 and 9 of the Factors Act, 1889.

(*h*) *Lee* v. *Butler* [1893], 2 Q. B. 318 ; 62 L. J. Q. B. 591 ; *Wylde* v. *Legge* [1901], 84 L. T. 121 ; *cf. Belsize Motor Supply Co.* v. *Cox* [1914], 1 K.B. 244 ; 83 L. J. K. B. 261.

on sale: Alpe, 18th ed., pp. 118, 119, and cannot be registered until stamped.(*i*)

Fixtures. Fixtures, *i.e.*, chattels affixed to the land or to a building, are, when so affixed, part of the land, and pass by an assurance of the land itself without being expressly mentioned; this is so whether the assurance be absolute or by way of mortgage, legal or equitable (including a deposit of deeds), and whether the person making the assurance, or the depositor, be absolute owner of the land and fixtures, or a lessee of the land who has put up the fixtures and has a right to remove them as against his landlord.(*j*)

Lessee's fixtures. But a lessee or tenant having put up fixtures which he has a right to remove, may assign them by deed or writing separately from his interest in the land. Such an assignment operates as a transfer of the right of severance and a licence to the assignee to enter upon the land for the purpose of exercising such right.(*k*)

SECT. II.—*The provisions of L. P. Act, 1925, s. 172, and the Bankruptcy Act affecting dispositions of personal chattels.*

Voluntary conveyances to defraud creditors. The L. P. Act, 1925, s. 172 (reproducing 13 Eliz. c. 5, save that "good consideration" will be taken into account as well as "valuable consideration") renders void all gifts and alienations of goods and chattels, made with intent to hinder or defraud creditors. It was held in *Twyne's Case* (1601), 3 Co. Rep. 80, that an assignment by a debtor of his goods to one of his creditors was fraudulent and void against another creditor on the ground (among others) that the grantor was permitted to retain possession. But in this and subsequent cases the continuance in possession was treated as a mark only, and not as conclusive evidence of fraud; where such possession was consistent with the terms of the deed and the nature of the transaction, as in the case of a mortgage, the suspicion of fraud was rebutted, and the transaction could not be impeached.(*l*)

Retention of possession.

(*i*) Stamp Act, 1891, s. 41. Highmore, 4th ed., 132. As regards the stamps on marketable securities and contract notes, see Fin. (1909-10) Act, 1910, ss. 76–79; Fin. Acts, 1911, s. 13; 1920, s. 38; Alpe, 18th ed., p. 182, *et seq.* Marketable securities.

(*j*) *Meux* v. *Jacobs* (1875), L. R. 7 H. L. 481; 44 L. J. Ch. 481; *Reynolds* v. *Ashby* [1904], A. C. 466; 73 L. J. K. B. 946; *Re Rogerstone Brick, &c., Co.* [1919], 1 Ch. 110; 88 L. J. Ch. 49; see also L. P. Act, 1925, s. 62, under which fixtures pass by a conveyance of land unless a contrary intention is shown.

(*k*) *Thompson* v. *Pettit* (1847), 16 L. J. Q. B. 162; *Horsfall* v. *Hey* (1848), 2 Exch. 778; 17 L. J. Ex. 266.

(*l*) *Edwards* v. *Harben* (1788), 2 T. R. 587; *Martindale* v. *Booth* (1832), 3 B. & Ad. 498; 1 L. J. K. B. 166; *Weaver* v. *Joule* (1857), 3 C. B. (N. S.) 309; *Macdona* v. *Swiney* (1858), 8 Ir. C. L. R. 73; see also *Wooderman* v.

Registered bills of sale or deeds of arrangement, when valid.

A registered bill of sale is not invalidated under the section merely by the grantor remaining in possession : *Alton* v. *Harrison* (1869), L. R. 4 Ch. 622 ; 38 L. J. Ch. 669 ; nor is a registered deed of arrangement merely because it reserves a benefit to the debtor : *Maskelyne* v. *Smith* [1903], 1 K. B. 671 ; 72 L. J. K. B. 237.

Actual fraud invalidates bills of sale, and voluntary bills of sale void if donor insolvent.

Actual fraud will invalidate an alienation, whether by registered bill of sale or otherwise ; and a voluntary bill of sale of chattels, whether registered or not, like any other voluntary conveyance of real or personal property, is, under s. 172, fraudulent and void against creditors, if the donor is at the time of making it in insolvent circumstances : See Vol. III, "Settlements."

Void assignments are acts of bankruptcy.

An assignment void under s. 172 will support a petition in bankruptcy if presented within three months ; it is an act of bankruptcy within the Bankruptcy Act, 1914, s. 1. Such an assignment may be set aside by the trustee though it was made more than three months before the presentation of the petition : Wms. Bankruptcy, 13th ed., 6.

Effect of s. 172 on ante nuptial settlements.

An ante nuptial settlement cannot be set aside under s. 172 unless the wife was actually a party to the fraud.(*m*)

Bankruptcy Act.(*n*)

What is an act of bankruptcy.

Under the Bankruptcy Act, 1914, s. 1, a debtor commits an act of bankruptcy in (amongst other) the following cases :—

(A) "If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally" : The Deeds of Arrangement Act, 1914, s. 24, excludes from the operation of section one of the Bankruptcy Act, 1914, deeds of arrangement which have been executed with the necessary formality. If, however, such a deed subsequently becomes void, even an assenting creditor may found his petition on it as an act of bankruptcy :(*o*)

Deeds of arrangement.

(B) "If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof" :(*oo*)

(C) "If in England or elsewhere he makes any conveyance

Baldock (1819), 8 Taunt. 676 ; see, on this section, 1 Wolst. & Cherry, 11th ed., 432.

(*m*) *Re Pennington* (1888), 5 Morr. 216, 268 ; as to s. 172 generally, see Wms. Bkcy., 13th ed., 6, 9, 15, 71, 301-304, 308, 309.

(*n*) Generally as to Bankruptcy, see Wms. Bkcy., 13th ed.

(*o*) Wms. Bkcy., 13th ed., 1-5, 42-51. As to what conduct precludes a creditor from relying on an assignment as an act of bankruptcy, see *Re Beesley* (1914), 109 L. T. 910.

(*oo*) *Re Herman* [1915], H. B. R. 41 ; *Re Gunsbourg* [1918-19], B. & C. R., 108 ; 88 L. J. K. B. 562.

or transfer of his property, or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt."

In any of these cases the disposition constituting the act of bankruptcy is void, if a petition for bankruptcy is presented within three months, and the debtor is adjudged a bankrupt thereon: ss. 4 (1) (*c*), 37 (1).

Conveyance of all a debtor's property for the benefit of creditors generally.

In order to bring a case within (A) there must be a conveyance or assignment by which the whole, or substantially the whole, of the debtor's property is vested in trustees for the benefit of his creditors generally. A conveyance of all property, except leaseholds, with a declaration of trust as to leaseholds, is an assignment within the Act: *Re Hughes* [1893], 1 Q. B. 595; 62 L. J. Q. B. 358; but a mere agreement by the owner that his property shall be dealt with for the benefit of his creditors is not sufficient: *Re Spackman* (1890), 24 Q. B. D. 728; 59 L. J. Q. B. 306.

A retainer to a solicitor to conduct an action does not include an authority to assent to the execution by the defendant of a deed of assignment of his property to a trustee for the benefit of his creditors; where a solicitor so assented the plaintiff was able to treat the assignment as an act of bankruptcy.(*p*)

Conveyance of all a debtor's effects to secure an antecedent debt an act of bankruptcy.

As regards (B), it has been long settled that a conveyance by a debtor of all his effects, or of all his effects with a colourable or trifling exception, to one of his creditors to secure an antecedent debt, is fraudulent within the meaning of the bankruptcy law, and an act of bankruptcy; the law is the same whether the debtor be a trader or not.(*q*)

Sale to purchaser in good faith of whole stock not an act of bankruptcy, nor a mortgage to secure a present advance.

But an absolute sale to a purchaser in good faith of the whole of a debtor's stock-in-trade is not an act of bankruptcy.(*r*) So also, a mortgage of the whole of a debtor's stock-in-trade to secure a present advance is a valid transaction; it makes no difference that the deed enables the mortgagee to seize after-acquired property or that the advance bears a small proportion to the value of the goods assigned.(*s*)

(*p*) *Ex p. The Debtor and Petitioning Creditors* [1914], 2 K. B. 758; 83 L. J. K. B. 1176.

(*q*) *Smith* v. *Cannan* (1853), 2 El. & Bl. 35; 22 L. J. Q. B. 291; *Ex p. Foxley* (1868), L. R. 3 Ch. 515; *Re Wood* (1872), L. R. 7 Ch. 302; 41 L. J. Bk. 21.

(*r*) *Baxter* v. *Pritchard* (1834), 1 A. & E. 456; 3 L. J. K. B. 185; *cf. Re David and Adlard* [1914], 2 K. B. 694; 83 L. J. K. B. 1173.

(*s*) *Ex p. Dann* (1881), 17 Ch. D. 26; 51 L. J. Ch. 290; Wms. Bkcy., 13th ed., 8–11.

A mortgage which, on the face of it, appears to be made to secure an existing debt may be supported by evidence that it was made pursuant to a parol agreement made at the time of the loan: *Harris* v. *Rickett* (1859), 4 H. & N. 1; 28 L. J. Ex. 197; this applies even where the mortgage is made immediately before the bankruptcy: *Re Davies* [1921], 3 K. B. 628. But it must be made clear to the Court that the agreement was in good faith, and not in fact an agreement that the security should be postponed until the grantor was on the eve of bankruptcy or in order to protect his credit: *Re Jackson and Bassford* [1906], 2 Ch. 467; 75 L. J. Ch. 697.

What is a substantial exception, so as to prevent operation of doctrine.

Where a portion of the debtor's effects is excluded from the assignment, the question has to be decided whether the part so excluded is or is not a substantial part, so as to prevent the operation of the above doctrine; this must depend on the particular circumstances of each case: *Ex p. Hawker* (1872), L. R. 7 Ch. 214; 41 L. J. Bk. 34.

Value of book debts to be calculated.

In estimating whether an assignment comprises the whole of a trader's property the value of his book debts is to be taken into account: *Ex p. Burton* (1879), 13 Ch. D. 102.

Where mortgage is partly for old debt and partly for new advance.

Where a trader assigns all his effects to a creditor in consideration partly of an existing debt and partly of a new advance, the validity of the transaction depends on whether the object of the transaction is, by means of the new advance to enable or assist the trader to continue his trade, or whether the new advance is colourable only, the real intention being to give a security for the past debt.(*t*)

Where assignment of all to secure past debt and future advances is good.

An assignment of all the debtor's property to secure a past debt and a future advance is good, if there is a contemporaneous agreement to make such advance to a sufficient amount, and such an advance is in fact made. The agreement need not be technically binding at law or in equity; a promise in good faith is sufficient. In the absence of such an agreement the bill of sale would be void: *Ex p. Wilkinson* (1883), 22 Ch. D. 788; 52 L. J. Ch. 657. The mere existence of an antecedent debt is not valuable consideration for a security given by the debtor.(*u*)

Forbearance is not good consideration.

A forbearance to enforce an existing security is not a good consideration for supporting a subsequent assignment of the

(*t*) *Ex p. Johnson* (1884), 26 Ch. D. 338; 53 L. J. Ch. 762; *Re Rees* [1894], A. C. 135; 63 L. J. P. C. 70.

(*u*) *Wigan* v. *English, &c., Assurance Association* [1909], 1 Ch. 291; 78 L. J. Ch. 120.

debtor's whole property to secure the pre-existing debt: *Ex p. Payne* (1879), 11 Ch. D. 539.

Assignment under pressure.

The fact that an assignment of the whole of a debtor's property is made under pressure does not prevent it from being an act of bankruptcy.(*v*)

Fraudulent preference.

As regards (c) the Act also provides (*w*) that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within *three* months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy; but this section does not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Whether a fraudulent preference depends on object with which made.

In determining what is a fraudulent preference, the Court will in each case consider whether the payment or transaction sought to be set aside was or was not made with a view to give one creditor a preference over the others; this is a question of fact to be determined by the Court or jury, according to the particular circumstances of each case. If the payment, &c., has been spontaneous on the part of the debtor, there would be a strong inference on the affirmative side; but if there had been pressure on the creditor's part, it would still be a question whether the payment was made under the force of such pressure.(*x*) If it appeared from all the circumstances that the dominant intention of the debtor was to give the preference, though this might not be the only motive, the payment would be an act of bankruptcy.(*y*)

(*v*) *Newton* v. *Chantler* (1806), 7 East, 138; *Jones* v. *Harber* (1870), L. R. 6 Q. B. 77; 40 L. J. Q. B. 59.

(*w*) S. 44 (1) (2); see notes on the section in Wms. Bkcy., 13th ed., 309, *et seq.* As to fraudulent preference by companies, see *Re Jackson and Bassford* [1906], 2 Ch. 467; 75 L. J. Ch. 697; *Re Columbian, &c., Co.* [1910], 2 Ch. 120; 79 L. J. Ch. 583.

(*x*) See *Sharp* v. *Jackson* [1899], A. C. 419; 68 L. J. Q. B. 866; Wms. Bkcy., 13th ed., 310, *et seq.*

(*y*) *Ex p. Hill* (1883), 23 Ch. D. 695; 52 L. J. Ch. 903; *Ex p. Taylor* (1886), 18 Q. B. D. 295; 56 L. J. Q. B. 195; *Re Washington, &c., Co.* [1893], 3 Ch. 95;

Goods in reputed ownership of bankrupt.

Order and disposition clause in Bankruptcy Act, 1914.

The Act of 1914 includes, as part of the property divisible among the creditors of the bankrupt, " all goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section."(*z*)

By s. 167, goods are defined as all chattels personal, but under s. 38 (2) (*c*) things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, are excluded from this definition when applied to the order and disposition clause in s. 38.

Does not apply to fixtures.

The order and disposition clause does not apply to chattels which have acquired the character of fixtures, whether the property to which they are attached be freehold or leasehold, and whether as between landlord and tenant the fixtures are the absolute property of the landlord, or are removable by the tenant, and whether they are disposed of by the same instrument with the land, or separately;(*a*) nor does it apply to goods in the bankrupt's possession otherwise than in his trade or business, *e.g.*, the furniture in his private residence.

Furniture in private residence.

Does not apply to goods in possession of tradesman in the usual course of trade.

If a tradesman in the ordinary course of his business has in his possession the goods of customers, such possession does not constitute him reputed owner, and the goods will not pass to the trustee on his bankruptcy. Thus, books deposited by the owner with a bookseller, and kept by him as a part of his general stock, to be sold on commission: *Whitfield* v. *Brand* (1847), 16 M. & W. 282; 16 L. J. Ex. 103; or books left with a publisher for sale in the usual course of trade,(*b*) or furniture hired by an hotel

62 L. J. Ch. 895; *Re Lake* [1901], 1 Q. B. 710; 70 L. J. K. B. 390; and see *Re Ashwell* [1912], 1 K. B. 390; 81 L. J. K. B. 360.

(*z*) S. 38 (2) (*c*); *Re Watson* [1904], 2 K. B. 753; 73 L. J. K. B. 854; Wms. Bkcy., 13th ed., 266, *et seq*; as to the application of this section to goods included in a bill of sale see *Hollinshead* v. *Egan* [1913], A. C. 564; 83 L. J. P. C. 74.

(*a*) *Ex p. Barclay* (1852), 5 D. & M. G. 403; 25 L. J. Bk. 1; *Whitmore* v. *Empson* (1856), 23 Beav. 313; 26 L. J. Ch. 364; *Mather* v. *Fraser* (1856), 2 K. & J. 536; 25 L. J. Ch. 361; *Walmsley* v. *Milne* (1859), 29 L. J. C. P. 97; *Tebb* v. *Hodge* (1869), L. R. 5 C. P. 73; 39 L. J. C. P. 56.

(*b*) *Ex p. Greenwood* (1862), 6 L. T. 558; see also *Ex p. Wingfield* (1879), 10 Ch. D. 591.

keeper, but not by other traders,(*c*) or carriages kept on the premises of a coachmaker for the true owner : *Bartram* v. *Payne* (1827), 3 Car. & P. 175, do not, on the bankruptcy of the bookseller, publisher, hotel keeper, or coachmaker, pass to his trustee.

Farming produce left on farm after sale.

There are also other instances in which custom will take the case out of the rule of reputed ownership. Thus, where farming produce was purchased, and the price was paid before the bankruptcy, but it appeared to be the custom of farmers to leave such produce upon the farm of the seller until it suited the convenience of the buyer to take it away, it was held that this custom exempted such produce from passing to the trustee under the law of reputed ownership : *Ex p. Vidler* (1862), 11 W. R. 113 ; 7 L. T. 370 ; a similar decision was given where butts of whisky were, in accordance with the custom of the trade, allowed to remain in the vendor's bonded warehouse after a sale : *Ex p. Watkins* (1873), L. R. 8 Ch. 520 ; 42 L. J. Bk. 50.

Bonded warehouse.

Goods in possession of bankrupt on a contract of hiring.

Where a trader sells chattels, continues in possession on a contract of hiring, and then becomes bankrupt, the goods will pass to the trustee in bankruptcy, unless the change of ownership has been made notorious : *Ex p. Brooks* (1883), 23 Ch. D. 261, or unless the sale has been carried into effect by a bill of sale registered under the Bills of Sale Act, 1878,(*d*) or unless it is a well-known custom in the trade for goods of that description to be held on hire. Where there is no relation of vendor and purchaser, but the owner of chattels lets them to a trader who becomes bankrupt, the right of the owner as against the trustee in bankruptcy will still depend on whether such taking on hire is in accordance with notorious usage : *Re Matthews* (1876), 1 Ch. D. 501 ; 45 L. J. Bk. 100.

Married women.

A married woman carrying on trade, or business, whether or not apart from her husband, is subject to the bankruptcy laws, as if she were a *feme sole:* Bankruptcy Act, 1914, s. 125 (1). This section replaces s. 1 (5) of the M. W. P. Act, 1882. The Bankruptcy Act, 1914, s. 125 (2), enacts that : " where a married woman carries on a trade or business, and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy

(*c*) *Ex p. Turquand* (1885), 14 Q. B. D. 636 ; 54 L. J. Q. B. 242 ; *Re Tabor* [1920], 1 K. B. 808 ; 89 L. J. K. B. 352.

(*d*) S. 20 ; Act of 1882, s. 15 ; *Swift* v. *Pannell* (1883), 24 Ch. D. 210 ; 53 L. J. Ch. 341.

proceedings against her by a bankruptcy notice, as though she were personally bound to pay the judgment debt." The court has power, under s. 52, to appropriate the income of property subject to restraint on anticipation. Where a married woman becomes bankrupt the husband's claims in respect of money lent for the purposes of her trade or business are postponed until the claims of the other creditors for money or money's worth have been satisfied : s. 36 (1). The wife is similarly postponed in the husband's bankruptcy by s. 36 (2), which replaces s. 3 of the M. W. P. Act, 1882 ; the latter section did not affect the right of the wife as executrix to retain the debt out of the assets of her husband : *Re Ambler* [1905], 1 Ch. 697 ; 74 L. J. Ch. 367 ; and it is suggested that this right has not been affected.

Ante-nuptial settlement of personal chattels supported against husband's bankruptcy.

A deed made before marriage, whereby furniture or other chattels belonging either to the wife or the husband are assigned to the wife or a trustee for the wife, is good against the trustee in bankruptcy of the husband, though at the date of the bankruptcy the goods are in the house in which they both reside ; (*e*) the deed need not be registered, being excluded from the operation of the Bills of Sale Act, 1878 : s. 4 ; and see *Re Reis* [1904], 2 K. B. 769 ; 73 L. J. K. B. 929. A similar deed made after marriage for valuable consideration is good, if registered ; but not otherwise.(*f*)

In order to come within the order and disposition clause the goods must be in bankrupt's possession with consent of true owner.

In order to confer on the trustee in bankruptcy a right to sell the goods under the order and disposition clause, they must be in the bankrupt's possession as reputed owner at the time of the bankruptcy, with the *consent* of the true owner. In this respect there is an important difference between the " apparent possession " mentioned in the Bills of Sale Act, 1878, and " order and disposition " under the Bankruptcy Act. If, therefore, the real owner has withdrawn his consent and taken steps to take possession, even though he may not have succeeded owing to the refusal of the debtor to give them up or otherwise, the title of the trustee will be excluded.(*g*) Also if the debtor has obtained possession of goods fraudulently, the right of the defrauded

(*e*) *Simmons* v. *Edwards* (1847), 16 M. & W. 838 ; and see *Re Magnus* [1910], 2 K. B. 1049 ; 80 L. J. K. B. 71.

(*f*) *Ashton* v. *Blackshaw* (1870), L. R. 9 Eq. 510 ; 39 L. J. Ch. 205 ; *Ex p. Cox* (1876), 1 Ch. D. 302 ; *French* v. *Gething* [1922], 1 K. B. 236 ; 91 L. J. K. B. 276.

(*g*) *Smith* v. *Topping* (1833), 5 B. & Ad. 674 ; 3 L. J. K. B. 47 ; *Ex p. Harris* (1872), L. R. 8 Ch. 48 ; 42 L. J. Bk. 9 ; *Re Eslick* (1876), 4 Ch. D. 496 ; 46 L. J. Bk. 30 ; *Taylor* v. *Eckersley* (1877), 5 Ch. D. 740.

person to get them back is not defeated by the former's bankruptcy, unless the latter has known of the fraud for some time before the bankruptcy and delayed unreasonably to assert his right.(*h*)

Property held by bankrupt in trust excepted from Bankruptcy Act.

Property held by the bankrupt in trust for any other person is expressly exempted from the Bankruptcy Act, 1914.(*i*) The exemption is not restricted to a trustee in the ordinary meaning of the word: see Wms. Bkcy., 13th ed., 217, *et seq.*

Order and disposition clause does not apply where possession is obtained or demanded without notice between act of bankruptcy and receiving order.

Whenever possession is obtained, or demanded, between the act of bankruptcy of the debtor and the date of the receiving order, without notice on the part of the owner of such act of bankruptcy, the order and disposition clause of the Bankruptcy Act will not apply, as such possession or demand would be a dealing with the bankrupt within the meaning and protection of the forty-fifth section; even though the owner may have been informed before taking possession that an act of bankruptcy is in contemplation: *Re Wright* (1876), 3 Ch. D. 70; 45 L. J. Bk. 130.

Powers of trustee in bankruptcy.

The trustee in bankruptcy may dispose of the bankrupt's property by sale in consideration for a sum of money payable either immediately or at a future time: ss. 55 and 56; Wms. Bkcy., 13th ed., 349, *et seq.*; but in doing the latter he must consult the wishes of the committee of inspection: s. 56. In certain cases the Official Receiver may exercise the powers of trustee in bankruptcy: s. 53. Where the bankrupt is a trustee his right of indemnity does not pass to his trustee in bankruptcy.(*j*) A trustee in bankruptcy can dispose of all the bankrupt's property, real and personal, whether situated in England or elsewhere: ss. 38, 167; but as real property can only be dealt with in accordance with the law of the country in which it is situated a trustee can only deal with the bankrupt's real property in countries in which the jurisdiction of the Bankruptcy Courts of this country runs. However, under s. 22, he has power to force the bankrupt to convey to him all his real property by whatever form of conveyance is lawfully effective in the country in which the property is situated, but this section can only be used where the bankrupt is within the jurisdiction of the English Courts.

(*h*) *Load* v. *Green* (1846), 15 M. & W. 216; 15 L. J. Ex. 113; and see *Tilley* v. *Bowman* [1910], 1 K. B. 745; 79 L. J. K. B. 547.

(*i*) S. 38 (1); *Re Hamilton, Young & Co.* [1905], 2 K. B. 772; 74 L. J. K. B. 905; S. L. Act, 1925, s. 103, extends this principle.

(*j*) *Jennings* v. *Mather* [1902], 1 K. B. 1; 70 L. J. K. B. 1032; and see *St. Thomas' Hospital* v. *Richardson* [1910], 1 K. B. 271; 79 L. J. K. B. 488.

Conveyances and transfers for value by a bankrupt.

Transactions between a debtor and other persons, including any of his creditors, which are for value, and have taken place before the date of the receiving order and without notice of any available act of bankruptcy, are protected by Bankruptcy Act, 1914, s. 48. Where certain creditors received information that a bankruptcy notice expiring at midnight on that day, if not complied with, had been served on one of their debtors; and some days afterwards obtained a sum in satisfaction of their debt, without making any enquiry whether the bankruptcy notice had been complied with or not, when in fact it had not been complied with, it was held that they had not received notice of the bankruptcy or been put upon enquiry concerning it: *Re Boocock* [1916], 1 K. B. 816; 85 L. J. K. B. 914. The protection of this section only relates to direct dealings between the debtor and other persons, where a transfer from the debtor is void as against the trustee, a subsequent purchaser from the transferee obtains no better title than the transferee obtained from the debtor.(*k*)

Payments, &c., to a bankrupt or his assignee before receiving order.

Under s. 46 the payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, will, notwithstanding anything in the Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made, and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business, or otherwise done in good faith.

Before 1914 such payments were only protected if made without notice of an available act of bankruptcy: see *Re Teale* [1912], 2 K. B. 367; 81 L. J. K. B. 1243.

Searches and notice.

As to searches in bankruptcy: L. C. Act, 1925, ss. 2, 3, 6 and 7; as to imputed notice: L. P. Act, 1925, ss. 198 and 199.

Voluntary Settlements.

Provision as to voluntary settlements made by settlor.

It has been already stated that under L. P. Act, 1925, s. 172, a voluntary disposition of property is void against creditors in certain circumstances. Under the Bankruptcy Act, 1914, s. 42, any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser(*l*) or incumbrancer in good faith and for valuable

(*k*) *Re Gunsbourg* [1920], 2 K. B. 426; 89 L. J. K. B. 725; see further Wms. Bkcy., 13th ed., 320, *et seq.*

"Purchaser." (*l*) The word "purchaser" in this section means a buyer in the ordinary commercial sense, and not a purchaser in the strict legal sense: *Ex p. Hillman*

consideration, or a settlement made on or for the wife or children of the settlor of property, which has accrued to the settlor after marriage in right of his wife, will, if the settlor becomes bankrupt within *two* years after the date of such settlement, be void against the trustee in the bankruptcy, and will, if the settlor becomes bankrupt at any subsequent time within *ten* years after the date of such settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property (*m*) comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. The term "settlement" includes any conveyance or transfer of property.

Two years and ten years rules.

As regards the avoidance of voluntary settlements the word "void" means "voidable." A vendor claiming under a voluntary settlement has a title which he can force on a purchaser: *Re Carter and Kenderdine* [1897], 1 Ch. 776; 66 L. J. Ch. 408. A purchaser for value from the donee under a voluntary settlement, without notice of any act of bankruptcy committed by the settlor, has a good title against the settlor's trustee in bankruptcy, even though the purchase is subsequent to the act of bankruptcy to which the title of the trustee relates back.(*n*)

Title under voluntary settlements.

Sect. III.—*The Provisions of the Bills of Sale Acts.*

The Bills of Sale Acts now in force are the Acts of 1878, 1882, 1890, and 1891. The Act of 1882 contains provisions having for their object not only the protection of the creditors of the grantor from fraudulent dispositions by him, but also the protection of the grantor himself from the oppressive action of money-lenders.(*o*)

Bills of Sale Acts.

The Act of 1878 applies to every bill of sale (whether absolute or subject or not to any trust), whereby the holder or grantee

To what Bills of Sale Acts apply.

(1879), 10 Ch. D. 622; 48 L. J. Bk. 77, see also *Re Parry* [1904], 1 K. B. 129; 73 L. J. K. B. 83. The release of a right or the compromise of a claim may be sufficient to constitute a person a "purchaser" within the meaning of the section: *Re Pope* [1908], 2 K. B. 169; 77 L. J. K. B. 767.

(*m*) As to how far the goodwill of a business may be taken into account, see *Re Butterworth* (1882), 19 Ch. D. 588; 51 L. J. Ch. 521.

(*n*) *Re Hart* [1912], 3 K. B. 6; 81 L. J. K. B. 1213; *Re Shrager* [1913], 108 L. T. 346; *cf. Re Gunsbourg* [1920], 2 K. B. 426; 89 L. J. K. B. 725.

(*o*) See Reed on the Bills of Sale Acts, 13th ed., 204, *et seq.*; also the Money Lenders Acts, 1900 and 1911.

has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale: s. 3. The Act of 1882 applies only to bills of sale given by way of security for the payment of money.

Imported goods.

The Acts of 1890 and 1891 exempt letters of hypothecation of imported goods from the provisions of the previous Acts.

What is a Bill of Sale.

The Act of 1878, ss. 4–7, defines what is a bill of sale (*oo*) within the meaning of the Acts: see also Reed, 13th ed., 46, *et seq.* Section 4 also excepts certain transactions from the operation of the Acts. Thus a mortgage of chattels settled as heirlooms, by the reversioner, is a mortgage of a thing in action, hence is not a bill of sale: *Re Thynne* [1911], 1 Ch. 282; 80 L. J. Ch. 205.

Reversions.

Agreements.

An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale: *Shears* v. *Jones* [1922], 2 Ch. 802; 92 L. J. Ch. 28.

Document not conferring right to take possession not a bill of sale.

Document accompanying pledge.

In order to be a bill of sale for the purposes of the Acts, the document must confer the right to take possession. If the person to whom the document is given is already in possession of the goods, or if he has acquired the right to such possession independently of it, it is not a bill of sale. Thus, if goods are deposited with a lender, and at the same time a document is signed recording the transaction and regulating the rights of the pledgee, the document is not a bill of sale.(*p*) This is so even where the delivery of the goods to the lender is constructive only, *e.g.*, where the custody is in a third party, who assents to an arrangement that they shall henceforth be held on behalf of the lender.(*q*) But if the lender takes possession of goods pursuant to a document authorising him to do so, such a document is a bill of sale, and the title of the lender depends on its validity.(*r*)

(*oo*) The Act of 1882 does not apply to documents within the Act of 1878, s. 4, which are made otherwise than by way of security: Act of 1882, s. 3. The latter Act applies to bills by way of security only.

(*p*) *Ex p. Hubbard* (1886), 17 Q. B. D. 690; 55 L. J. Q. B. 490; *Newlove* v. *Shrewsbury* (1888), 21 Q. B. D. 41; 57 L. J. Q. B. 476; *Morris* v. *Delobbel-Flipo* [1892], 2 Ch. 352; 61 L. J. Ch. 518. For form of such a document, *cf. Dublin City Distillery Co.* v. *Doherty* [1914], A. C. 823; 83 L. J. P. C. 265.

(*q*) *Charlesworth* v. *Mills* [1892], A. C. 231; 61 L. J. Q. B. 830.

(*r*) *Ex p. Parsons* (1886), 16 Q. B. D. 532; 55 L. J. Q. B. 137; *Dublin Distillery Co.* v. *Doherty* [1914], A. C. 823; 83 L. J. P. C. 265; *Re Allester* [1922], 2 Ch. 211; 91 L. J. Ch. 797.

Hire-purchase agreement.

In determining whether a document is a bill of sale within the meaning of the Act of 1882, the Court looks at all the facts, and not only at the document itself. Thus, if a transaction taking the form of a sale of chattels by A. to B., and a hire-purchase agreement by B. to A., is in fact intended as a security for a loan, and the relation between the parties was throughout that of borrower and lender, the Court will treat the agreement as a bill of sale by way of security for money and as void under the Act. The test in such a case is whether there was any interval between the so-called sale and the signing of the hiring agreement during which B. was the absolute owner of the chattels free from any trust in favour of A.(*s*) A hirer of personal chattels under an agreement which gives him an option to purchase upon payment of all the agreed instalments of rent, but imposes on him no obligation to do so, is not the " true owner " of the chattels within the meaning of s. 5 of the Act of 1882.(*t*)

Holder of option.

Inventory or receipt.

Neither an inventory of goods with a receipt attached, nor a receipt without an inventory, nor an inventory and valuation, is a bill of sale for the purpose of the Acts unless it operates as an assurance of the goods, *i.e.*, if, independently of it, there is a complete contract sufficient to pass the property in them.(*u*)

Construction of Act as regards mortgage of land on which there is fixed trade machinery.

With regard to trade machinery, if an owner of land on which there is fixed trade machinery mortgages the land without any general words or any reference to fixtures or machinery, the mortgage is not a bill of sale of personal chattels, unless the deed expressly mentions the fixtures and authorises the mortgagee to sell them separately, or an intention that he may do so is to be gathered from the language of the deed.(*v*)

Meaning of " marriage settlement."

The exception of a " marriage settlement " in s. 4 includes not only an ante-nuptial settlement, but an instrument executed after marriage pursuant to a marriage settlement or articles : *Re Reis*, 1904, 2 K. B. 769 ; 73 L. J. K. B. 929.

(*s*) *Maas* v. *Pepper* [1905], A. C. 102 ; 74 L. J. K. B. 452 ; and see *G. E. Ry. Co.* v. *Lord* [1909], A. C. 109 ; 78 L. J. K. B. 160 ; *Prudential Mortgage Co.* v. *Marylebone B. C.* (1910), 8 L. G. R. 901 ; see also *Johnson* v. *Rees* (1915), 84 L. J. K. B. 1276.

" True owner."

(*t*) *Lewis* v. *Thomas* [1919], 1 K. B. 319 ; 88 L. J. K. B. 275 ; as to other cases on " true owner," see *Westen* v. *Fairbridge* [1923], 1 K. B. 667 ; 92 L. J. K. B. 577 ; *Harrods* v. *Stanton* [1923], 1 K. B. 516 ; 92 L. J. K. B. 403.

(*u*) *Marsden* v. *Meadows* (1881), 7 Q. B. D. 80 ; 50 L. J. Q. B. 536 ; *Ramsay* v. *Margrett* [1894], 2 Q. B. 18 ; 63 L. J. Q. B. 513 ; *Clapham* v. *Ives* (1904), 91 L. T. 69.

(*v*) *Johns* v. *Ware* [1899], 1 Ch. 359 ; 68 L. J. Ch. 155 ; and see L. P. Act, 1925, ss. 88 (4), 89 (4).

Post-nuptial gifts.

A post-nuptial gift from a husband to his wife of the furniture in a house, occupied by both of them, in consideration of natural love and affection, is not within the Bills of Sale Acts; the furniture is not in the order and disposition or the reputed ownership of the husband.

Chattels in business premises.

It is conceived that M. W. P. Act, 1882, s. 10, which provides that nothing in the Act shall give validity as against creditors of the husband to any gift by a husband to his wife of property which after such gift shall continue to be in the order and disposition or reputed ownership of the husband, applies only where the husband and wife are living in premises in which the husband carried on a business: *French* v. *Gething* [1922], 1 K. B. 236; 91 L. J. K. B. 276.

Debentures excepted from Act.

Debentures of incorporated companies are excepted from the operation of the Act of 1882 by s. 17, nor are they bills of sale within the meaning of the Act of 1878, but, when the charge is created, the debentures or trust deed must be registered under s. 93 of the Companies (Consolidation) Act, 1908, with the Registrar of Joint Stock Companies; and see L. C. Act, 1925, s. 10 (3). A society incorporated under the Industrial and Provident Societies Act, 1893, is not an incorporated company within the exception in s. 17 of the Act of 1882: *Re North Wales, &c., Society* [1922], 2 Ch. 340; 91 L. J. Ch. 415.

Essentials of a valid Bill of Sale.

Bills of sale not by way of security for money must be (1) attested by solicitor;

Every bill of sale not given by way of security for money must observe the following conditions, namely:—

(1) Its execution must be attested by a solicitor of the Supreme Court, and the attestation must state that, before its execution, the effect thereof was explained to the grantor by the attesting solicitor;(*w*)

(2) registered within seven days; and

(2) It must be registered within seven clear days from the making or giving thereof: s. 8, and see *Re Lavey* [1918-19], B. & C. R. 116;

(*w*) Act of 1878, s. 10. Notwithstanding the repeal in s. 10 of the Act of 1882, these provisions still apply where a bill of sale is given otherwise than to secure the payment of money: Reed, 13th ed., 203; *Casson* v. *Churchley* (1884), 53 L. J. Q. B. 335. If the attestation clause states that the effect of the bill of sale has been explained by the solicitor, this is sufficient, though he may not in fact have done so: *Ex p. Nat. Merc. Bk.* (1880), 15 Ch. D. 42; 49 L. J. Bk. 62. Nor need the affidavit state that such explanation was given: *Ex p. Bolland* (1882), 21 Ch. D. 543; 52 L. J. Ch. 113.

Attestation; affidavit.

(3) It must set forth the consideration for which it was given : s. 8, and see *Re Lavey* [1918-19], B. & C. R. 116. (3) state consideration ;

If the above conditions have not been observed, the bill of sale is void as against the trustee in bankruptcy of the grantor, against all trustees under any assignment for the benefit of creditors, and against execution creditors, so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the filing of the bankruptcy petition, or the execution of the assignment, or the execution of process, and after the expiration of such seven days (*x*) are in the possession or apparent possession of the grantor : Act of 1878, s. 8. or otherwise are void against trustee in bankruptcy, &c.

Personal chattels will be deemed to be in the apparent possession of the grantor so long as they remain or are in or upon any premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession may have been taken by or given to any other person.(*y*) What is apparent possession.

Every bill of sale given by way of security for money must observe the following conditions, namely :— Bill of sale by way of security for money void against every one, unless

(1) It must be attested by at least one credible witness, not being a party thereto, but need not be attested by a solicitor : Act of 1882, s. 10 ; (1) attested ;

(2) It must be registered within seven clear days after its execution, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England, if posted immediately after the execution thereof : s. 8 ; (2) registered within seven days ;

(3) It must truly set forth the consideration : s. 8 ; (3) consideration truly stated ;

(4) It must be made in accordance with the form in the schedule to the Act of 1882 : s. 9 ; (4) made in accordance with form in schedule ;

(5) It must be made or given in consideration of a sum not less than £30.(*z*) and (5) consideration £30 at least.

If the above conditions are not observed, the bill of sale is absolutely void, even as respects the grantor.

(*x*) If the sheriff takes goods in execution before the expiration of the seven days, the grantee may set up the bill of sale, though unregistered, see, *Marples* v. *Hartley* (1861), 3 E. & E. 610 ; 30 L. J. Q. B. 92. Seven days rule.

(*y*) S. 4. As to the meaning of "apparent possession," see *Hopkins* v. *Gudgeon* [1906], 1 K. B. 690 ; 75 L. J. K. B. 452, and cases there cited : also *Sales Agency Ld.* v. *Elite Theatres* [1917], 2 K. B. 164 ; 86 L. J. K. B. 1060.

(*z*) S. 12. *Davis* v. *Usher* (1884), 12 Q. B. D. 490 ; 53 L. J. Q. B. 422 ; *Darlow* v. *Bland* [1897], 1 Q. B. 125 ; 66 L. J. Q. B. 157.

Bill of sale to have schedule of property attached thereto.

Every bill of sale by way of security for money must have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and every such bill of sale is void except as against the grantor:—

(1) In respect of any personal chattels not specifically described in the schedule; and

(2) In respect of any personal chattels specifically described in the schedule, of which the grantor was not the true owner at the time of the execution thereof.

Exceptions.

But this does not apply to any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed, nor to any fixtures separately assigned or charged, or any plant or trade machinery where such fixtures, &c., are used on, or attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, &c., specifically described in the schedule to the bill of sale: ss. 4, 5, 6 of Act of 1882.

Avoidance of certain duplicate bills of sale.

A bill of sale executed within, or on the expiration of, seven days after the execution of a prior unregistered bill of sale of the same property and for the same debt, is void, unless the Court is satisfied that it was executed in good faith for the purpose of correcting a material error in the first bill, and not for the purpose of evading the Act: Act of 1878, s. 9.

Mode of registration.

Section 10 of the Act of 1878 prescribes the mode of registering bills of sale, and also provides that if the bill of sale is made or given subject to any defeasance or condition (*a*) or declaration of trust (in favour of the grantor) (*b*) not contained in the body thereof, such defeasance, &c., must be registered with it.

Priority of bills of sale.

Section 10 also directs that if two or more bills of sale are given, comprising in whole or in part any of the same chattels, they have priority in the order of the date of their registration respectively as regards such chattels. The joint effect of the above provision as to priority, and s. 5 of the Act of 1882, is, that if a person gives two successive bills of sale by way of absolute assignment, or two successive bills of sale by way of security for money, and the first is not registered but the second is, the

(*a*) *Carpenter* v. *Deen* (1889), 23 Q. B. D. 566; *Edwards* v. *Marcus* [1894], 1 Q. B. 587; 63 L. J. Q. B. 363.

(*b*) *Robinson* v. *Collingwood* (1865), 34 L. J. C. P. 18; *Thomas* v. *Searles*, [1891], 2 Q. B. 408; 60 L. J. Q. B. 722.

second has priority ; but if he first gives a bill of sale by way of absolute assignment which is not registered, and secondly, a bill of sale by way of security for money, which is registered, the second is void against the grantee under the first, because at the time of granting it the grantor was not the true owner.(*c*)

A transfer or assignment of a registered bill of sale need not be registered.(*d*)

Renewal of registration.

The registration of a bill of sale must be renewed every five years, but renewal does not become necessary by reason only of a transfer or assignment of a bill of sale.(*e*) The omission to renew may be rectified by a Judge of the High Court by extending the time : s. 14 ; but in a case where in the meantime the grantor had become bankrupt the Court refused to extend the time so as to defeat the vested interests of the trustee in bankruptcy.(*f*)

Transfers.

The new statutory form for transfer of mortgages is not available for a transfer of a bill of sale by way of security : L. P. Act, 1925, s. 114 (4) ; *cf.*, *ib.*, s. 115 (2) as respects receipts operating as transfers.

Other provisions of the Acts.

Order and disposition clause in Bkcy. Act applies to chattels comprised in a bill of sale by way of security, but not to absolute transfer.

Chattels comprised in a bill of sale given by way of security for money, and duly registered under the Act, are liable, notwithstanding the registration, to be seized and sold in the event of the grantor becoming bankrupt while the chattels remain in his possession, order, or disposition, in his trade or business under such circumstances that he is the reputed owner thereof.(*g*) Chattels comprised in a duly registered bill of sale, given by way of absolute transfer, are not in the order and disposition of the bankrupt within the meaning of the Bankruptcy Act, 1914.(*h*)

(*c*) *Tuck* v. *Southern Counties Deposit Bk.* (1890), 42 Ch. D. 471 ; 58 L. J. Ch. 699, see *Thomas* v. *Searles* [1891], 2 Q. B. 408 ; 60 L. J. Q. B. 722.

(*d*) Act of 1878, s. 10. See *Horne* v. *Hughes* (1881), 6 Q. B. D. 676 ; *Ex p. Turquand* (1885), 14 Q. B. D. 636 ; 54 L. J. Q. B. 242. *cf. Marshall and Snelgrove* v. *Gower* [1923], 1 K. B. 356 ; 92 L. J. K. B. 499.

(*e*) S. 11 ; Act of 1882, s. 8 ; and see *Antoniadi* v. *Smith* [1901], 2 K. B. 589 ; 70 L. J. K. B. 869.

(*f*) *Re Parsons* [1893], 2 Q. B. 122 ; 62 L. J. Q. B. 365. See *per* Buckley, J., as to the usual form of order, *Re Joplin, &c., Co.* [1902], 1 Ch. 79–80 ; 71 L. J. Ch. 21.

(*g*) Bkcy. Act, 1914, s. 38 ; Bills of Sale Act, 1882, s. 15, repealing s. 20 of Act of 1878.

(*h*) *Swift* v. *Pannell* (1883), 24 Ch. D. 210 ; 53 L. J. Ch. 341. This was decided with reference to the Bkcy. Act, 1869, but it is apprehended that the rule is the same under the Act of 1914.

Chattels in bill of sale liable to seizure in certain events only.

Personal chattels, assigned by a bill of sale as security for payment of money, cannot be seized or taken possession of by the grantee for any other than the following reasons :—

(1) If the grantor makes default in payment of the money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;

(2) If the grantor becomes a bankrupt (*cf.* L. P. Act, 1925, s. 110) or suffers the goods or any of them to be distrained for rent, rates, or taxes ;

(3) If the grantor fraudulently either removes or suffers the said goods or any of them to be removed from the premises ;

(4) If the grantor does not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;

(5) If execution has been levied against the goods of the grantor under any judgment at law.

The grantor may, however, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a Judge of the High Court in Chambers, and such Court or Judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the chattels, or may make such other order as may seem just : Act of 1882, s. 7.

Chattels not to be removed or sold for five days after seizure.

All personal chattels seized, or of which possession is taken under any bill of sale by way of security, must be allowed to remain on the premises where they were so seized or so taken possession of, and cannot be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of : Act of 1882, s. 13. Though after the expiration of the five days the grantee's right to the goods is absolute at law, the grantor may redeem at any time before removal and sale by payment of principal, interest and costs : *Johnson* v. *Diprose* [1893], 1 Q. B. 512 ; 62 L. J. Q. B. 291.

Right of redemption.

Bill of sale not to protect chattels against distress for rates and taxes.

A bill of sale given as security for money is no protection in respect of personal chattels included therein which, but for such bill of sale, would have been liable to distress under a warrant for the recovery of taxes and parochial rates : s. 14.

Inspection of registered bills of sale.

Any person may at reasonable times search the register, on payment of a fee, and make extracts of certain particulars : s. 16.

A bill of sale may be executed by attorney, and the grantee is not necessarily excluded from being the attorney: *Furnivall* v. *Hudson* [1893], 1 Ch. 335; 62 L. J. Ch. 178. Execution by attorney.

The form of a Bill of Sale by way of Mortgage.

Of the conditions required by the Act of 1882, the principal points to be attended to in the preparation of a bill of sale by way of mortgage are: (1) that the consideration is properly set forth, and (2) that the instrument is in accordance with the form in the schedule to the Act of 1882.

With respect to the consideration, it has been decided: What is a sufficient setting forth of the consideration.

(1) That money in fact owing from the mortgagor to the mortgagee may be properly stated as a sum of money then advanced and paid;(*i*) but money then advanced is improperly stated to be money now owing, and the omission of an acknowledgment of receipt is fatal: *Davies* v. *Jenkins* [1900], 1 Q. B. 133; 69 L. J. Q. B. 187;

(2) That if the money expressed to be paid, or a part of it, is in fact, by the direction of the mortgagor, or as a condition of the advance, applied in payment of the mortgagor's debts or in discharge of the mortgagor's liability to a third party not being a debt already due, the consideration is not untruly stated: *Re Wiltshire* [1900], 1 Q. B. 96; 69 L. J. Q. B. 145; but

(3) That if part of the money is *retained* by the mortgagee for interest or a bonus,(*j*) or to pay some debt not yet due,(*k*) or even to pay the expense of preparing the mortgage deed, that expense not being in fact a debt due at the time, but one which does not arise until after the mortgage is complete,(*l*) the bill of sale is void;

(4) Where the money was actually paid a week after the date of the bill of sale, but the transaction was made in good faith, it was held that the consideration was truly stated, though it was

(*i*) *Credit Co.* v. *Pott* (1880), 6 Q. B. D. 295; 50 L. J. Q. B. 106; *Thomas* v. *Searles* [1891], 2 Q. B. 408; 60 L. J. Q. B. 722.

(*j*) *Ex p. Charing Cross Bk.* (1880), 16 Ch. D. 35; 50 L. J. Ch. 157.

(*k*) *Ex p. Rolph* (1881), 19 Ch. D. 98; 51 L. J. Ch. 88; *Richardson* v. *Harris* (1889), 22 Q. B. D. 268; *Darlow* v. *Bland* [1897], 1 Q. B. 125; 66 L. J. Q. B. 157; *Parsons* v. *Equitable Investment Co.* [1916], 2 Ch. 527; 85 L. J. Ch. 761.

(*l*) *Ex p. Firth* (1882), 19 Ch. D. 419; 51 L. J. Ch. 473. In *Re Cann* (1884), 13 Q. B. D. 36, the solicitor acting for both parties retained part of the advance for his costs of the transaction, the bill of sale being given "in consideration of the sum of [*total advance*]." It was held that the consideration was truly stated; and see *London, &c., Discount Co.* v. *Jones* [1914], 1 K. B 147; 83 L. J. K. B. 403. True consideration.

stated in the bill of sale that the consideration was "now paid": *Re Rouard*, 85 L. J. K. B. 393.

Bill of sale by way of mortgage must be made in accordance with statutory form.

A bill of sale by way of mortgage must be made in accordance with the form given in the schedule to the Act of 1882. As to the meaning of the words "in accordance with," it has been laid down that "Every bill of sale must be substantially like the form in the schedule. Nothing substantial must be subtracted from it, and nothing actually inconsistent must be added to it"; (*m*) and in a later case, that if but for s. 9 the instrument as drawn would by virtue either of addition or omission have any legal effect which goes beyond or falls short of that which would result from the statutory form, then it is void. In order to be valid the bill of sale must produce, not the like effect, but the same effect, *i.e.*, the legal effect, the whole legal effect, and nothing but the legal effect, as that of the statutory form.(*n*)

Points decided with respect to form.

In accordance with the above rules of interpretation the following points have been decided, viz.:—

Principal and interest.

1. The bill of sale must state a fixed principal sum and rateable interest, and nothing can be added to these. The interest must not be capitalised, or a bonus made payable,(*o*) nor is it sufficient to fix a lump sum as payable for interest without mentioning the rate.(*p*)

As to mode and time of payment of money.

But the principal money and interest may be made payable on a certain day, with a covenant, if it is not paid on that day, to pay interest thereon half-yearly until payment.(*q*) Also, the money may be made payable by instalments, and in that case a provision may be inserted to the effect that, if default is made in payment of one instalment, the whole amount then remaining unpaid shall become payable at once: *Lumley* v. *Simmons* (1887), 34 Ch. D. 698; 56 L. J. Ch. 329. Where there is no such provision, default in payment of one instalment entitles the grantor to seize the goods: *Re Wood* [1894], 1 Q. B. 605; 63 L. J. Q. B. 352. The principal money and interest may be made payable

Principal and interest combined.

(*m*) *Davis* v. *Burton* (1883), 11 Q. B. D. 537, 540; 52 L. J. Q. B. 636; see *Burchell* v. *Thompson* [1920], 2 K. B. 80; 89 L. J. K. B. 533, where the omission of the receipt clause invalidated the bill of sale.

(*n*) *Ex p. Stanford* (1886), 17 Q. B. D. 259, 271; 55 L. J. Q. B. 341; *Rosefield* v. *Prov. Union Bank* [1910], 2 K. B. 781; 79 L. J. K. B. 1150.

(*o*) *Davis* v. *Burton* (1883), 11 Q. B. D. 537, 540; 52 L. J. Q. B. 636; *Re Williams* (1883), 25 Ch. D. 656; 53 L. J. Ch. 500.

(*p*) *Blankenstein* v. *Robertson* (1890), 24 Q. B. D. 543; 59 L. J. Q. B. 315; and see *Attia* v. *Finch* (1904), 91 L. T. 70.

(*q*) *Watkins* v. *Evans* (1886), 18 Q. B. D. 386; 56 L. J. Q. B. 200; *Ex p. Rawlings* (1887), 18 Q. B. D. 489; 56 L. J. Q. B. 197.

by weekly payments of a specified amount without distinguishing how much is principal and how much interest, provided that the rate of interest is stated : *Re Bargen* [1894], 1 Q. B. 444 ; 63 L. J. Q. B. 209.

Demand.

2. The money must not be made payable on demand,(*r*) but it may be made payable "on or before" a certain day : *De Braam* v. *Ford* [1900], 1 Ch. 142 ; 69 L. J. Ch. 82.

What covenants and provisions may be inserted for maintenance of security.

3. Covenants to insure and pay the necessary premiums, and to deliver to the mortgagee the last receipt if required : *Hammond* v. *Hocking* (1884), 12 Q. B. D. 291 ; 53 L. J. Q. B. 205 ; to replace and repair articles which may be destroyed, injured, or deteriorated : *Coates* v. *Moore* [1903], 2 K. B. 140 ; 72 L. J. K. B. 539 ; not to remove chattels without the mortgagee's consent; to pay rent, rates and taxes, and to produce on demand, or without demand, the last receipts for such rent, rates and taxes(*s*) may be inserted as being covenants agreed to by the parties for maintaining the security. This is so, though the terms of the covenant may be such that a breach thereof would be a cause of seizure under s. 7, assuming that the deed contains the proviso prescribed at the end of the statutory form, and no clause inconsistent with that proviso.(*t*) Provisions enabling a mortgagee to add to the security and retain out of the sale money any money expended by him in insurance, or in payment of rent, rates or taxes, by reason of the mortgagor's neglect to do so : *Goldstrom* v. *Tallerman* (1887), 18 Q. B. D. 1 ; 56 L. J. Q. B. 22 ; or the expenses incurred by him in or about the sale, or in seizing or taking possession of the chattels, or in defending or maintaining the security : *Lumley* v. *Simmons* (1887), 34 Ch. D. 698 ; 56 L. J. Ch. 329, are valid. So is a provision enabling the mortgagee to break open doors and windows for the purpose of seizing and taking possession : *Re Morritt* (1887), 18 Q. B. D. 222 ; 56 L. J. Q. B. 139. Any condition subject to which the bill of sale is given must be endorsed on the bill of sale before registration : Act of 1878, s. 10 (3).(*u*)

Endorsement.

(*r*) *Hetherington* v. *Groome* (1884), 13 Q. B. D. 789 ; 53 L. J. Q. B. 576 ; *Sibley* v. *Higgs* (1885), 15 Q. B. D. 619 ; 54 L. J. Q. B. 525.

(*s*) *Weardale Coal Co.* v. *Hodson* [1894], 1 Q. B. 598 ; 63 L. J. Q. B. 391 ; *Cartwright* v. *Regan* [1895], 1 Q. B. 900 ; 64 L. J. Q. B. 507 ; *Harrison* v. *Shallis* (1909), 25 T. L. R. 664.

(*t*) See cases in last note, also *Topley* v. *Corsbie* (1888), 20 Q. B. D. 350 ; 57 L. J. Q. B. 271 ; *Ex p. Ward* [1899], 2 Q. B. 517 ; 66 L. J. Q. B. 953.

(*u*) *Hall* v. *Whiteman* [1912], 1 K. B. 683 ; 81 L. J. K. B. 660 ; *Lester* v. *Hickling* [1916], 2 K. B. 302 ; 85 L. J. K. B. 1060 ; *Graham* v. *Hart* [1917], 1 K. B. 201 ; 86 L. J. K. B. 111.

Residence.

Under the Act of 1878, s. 10 (2), a description of the residence and occupation of the grantor of the bill must be given to the registrar with the copy of the bill for registration.(*v*)

Provisions which have been held to be not necessary for maintenance of security.

4. A provision enabling a mortgagee to retain out of the sale money any expenses incurred by him "in relation to this security" is too wide, and invalidates the deed: *Calvert* v. *Thomas* (1887), 19 Q. B. D. 204; 56 L. J. Q. B. 470; also a provision enabling a mortgagee who was an auctioneer to retain a commission out of the sale money: *Furber* v. *Cobb* (1887), 18 Q. B. D. 494; 56 L. J. Q. B. 273; and a provision exempting a purchaser from being bound or concerned to see whether default has been made: *Blaiberg* v. *Beckett* (1886), 18 Q. B. D. 96; 56 L. J. Q. B. 35; have been held to be fatal deviations from the statutory form.

Bill of sale by way of indemnity void.

5. A bill of sale given to a surety by way of security for money which he may be called upon to pay under a guarantee given by him is void, as not being in accordance with the statutory form: *Hughes* v. *Little* (1886), 18 Q. B. D. 32; 56 L. J. Q. B. 96.

The words "as beneficial owner" invalidate the deed.

6. The introduction of the words "as beneficial owner" invalidates the deed on the ground that, after 1881, they imply a covenant that in case of default the grantee may "enter into and upon or receive and thenceforth quietly hold, occupy, enjoy or take, and receive" the chattels assigned,(*w*) hence confer on him by implication a right to remove and sell at once without waiting for the five days prescribed by the Act.

Chattels must be described in schedule.

7. The chattels must be described in the schedule, and not in the body of the deed: *Thomas* v. *Kelly* (1888), 13 A. C. 506; 58 L. J. Q. B. 66.

Must not include interest in land.

8. A bill of sale is void if the schedule includes the mortgagor's interest in the farm where the chattels are.(*x*)

Several grantors.

9. A bill of sale given by two or more grantors, each of whom is a sole owner of part of the goods, is void: *Saunders* v. *White* [1902], 1 K. B. 472; 71 L. J. K. B. 318.

Void, if collateral security on other terms.

10. A bill of sale in the statutory form is void under s. 10 of the Act of 1878 if accompanied by a collateral security for one

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(*v*) *Barron* v. *Potter* [1915], 3 K. B. 593; 84 L. J. K. B. 2008; *Re Boddington* (1915), 84 L. J. K. B. 2119.

(*w*) S. 7 (*c*); *Ex p. Stanford* (1886), 17 Q. B. D. 259; 55 L. J. Q. B. 341.

Title deeds.

(*x*) *Cochrane* v. *Entwistle* (1890), 25 Q. B. D. 116; 59 L. J. Q. B. 418, see *Swanley Coal Co.* v. *Denton* [1906], 2 K. B. 873; 75 L. J. K. B. 1009, where the title deeds of the property were included in the schedule, and it was held these were pledged merely as documents.

and the same debt, so that the bill of sale is liable to be redeemed upon different terms to those mentioned in the bill of sale: *Edwards* v. *Marcus* [1894], 1 Q. B. 587; 63 L. J. Q. B. 363.

Description necessary.

11. A bill of sale is void, unless both the address and the description of the attesting witness appear in the attestation clause; the defect is not cured by the affidavit containing these particulars. A description must be given, though the witness has no occupation.(*y*)

Bill of sale not in accordance with form altogether void.

12. A bill of sale is void if the copy which is filed omi anything contained in the original.(*z*)

A bill of sale not in accordance with the form is void altogether, so that no action can be brought upon the covenant to pay;(*a*) but, of course, if there is an actual loan, the principal money may be recovered in a common action for money lent, with interest at the legal rate.(*b*) If personal chattels and other property are mortgaged by a deed, not in accordance with the statutory form, it is good as to the other property comprised in it.(*c*)

Powers of Distress.

Indemnities.

A power of distress given as an indemnity against a rent or against the breach of a covenant or condition affecting land is not a bill of sale: L. P. Act, 1925, s. 189.

After-acquired Chattels.

Bill of sale of after-acquired chattels prior to Act of 1882.

Previously to the Act of 1882, it was a common practice to include in a bill of sale not only particular chattels in the grantor's

(*y*) *Sims* v. *Trollope* [1897], 1 Q. B. 24; 66 L. J. Q. B. 11; *Altree* v. *A.* [1898], 2 Q. B. 267; 67 L. J. Q. B. 882; and see *Simmons* v. *Woodward* [1892], A. C. 100; 61 L. J. Ch. 252; and see note to Prec. XIV, p. 399, *infra*.

(*z*) *Burchell* v. *Thompson* [1920], 2 K. B. 80; 89 L. J. K. B. 533. For other cases on form of bills of sales, see *Hall* v. *Whiteman* [1912], 1 K. B. 683; 81 L. J. K. B. 660; *Cornell* v. *May*, 112 L. T. 1085; *Hill* v. *Lane* [1915], 1 K. B. 250; 84 L. J. K. B. 347; *National Provincial Bank* v. *Lindsell* [1922], 1 K. B. 21; 91 L. J. K. B. 196.

(*a*) *Davies* v. *Rees* (1886), 17 Q. B. D. 408; 55 L. J. Q. B. 363; *Pettit* v. *Lodge* [1908], 1 K. B. 744; 77 L. J. K. B. 413; *Smith* v. *Whiteman* [1909], 2 K. B. 437; 78 L. J. K. B. 1073; *Hall* v. *Whiteman* [1912], 1 K. B. 683; 81 L. J. K. B. 660.

(*b*) *Wilkins* v. *New Saville Securities* (1922), 39 T. L. R. 85.

(*c*) *Re Burdett* (1888), 20 Q. B. D. 310; 57 L. J. Q. B. 263; *Re Isaacson* [1895], 1 Q. B. 333; 64 L. J. Q. B. 191.

possession at the time, but also chattels to be subsequently acquired in substitution for or in addition to them.

Effect of licence to seize after-acquired goods at common law.

The only benefit which *at law* could be conferred on the donee under a bill of sale as to after-acquired effects was a power or licence to seize them whenever they came into possession, and the title of the donee was acquired by his actually obtaining possession under the licence; but such a power was revocable by the donor, and had no effect *at law* as against persons claiming under any subsequent assignment from him, which might be executed before the donee had obtained actual possession of them.(*d*)

A bill of sale of after-acquired chattels, if specific, operated in equity as a contract, and passed the property, when acquired, to the grantee.

In equity, however, a deed made for valuable consideration, and purporting to assign chattels to be afterwards acquired, and so described as to be capable of being identified, operated as a contract which fastened on the goods directly they came into the grantor's possession, and of which specific performance would be enforced. The instrument therefore in equity passed the property in the goods, when acquired, to the grantee.(*e*)

A second bill of sale made for valuable consideration without notice, after the goods have been acquired,

But as the assignment was good in equity only, it followed that if the grantor made a second bill of sale after the goods came into his possession, in favour of a purchaser or mortgagee for valuable consideration without notice of the first one, the second grantee would have priority over the first, by virtue of the equitable doctrine that where two persons have equal equities the legal title will prevail.(*f*) It makes no difference in this respect that since the passing of the Judicature Act equitable

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(*d*) *Carr* v. *Acraman* (1856), 11 Exch. 566; 25 L. J. Ex. 90; *Congreve* v. *Evetts* (1854), 10 Exch. 298; 23 L. J. Ex. 273; *Thompson* v. *Cohen* (1872), L. R. 7 Q. B. 527; 41 L. J. Q. B. 221.

(*e*) *Holroyd* v. *Marshall* (1864), 10 H. L. C. 191; 33 L. J. Ch. 193; *Clements* v. *Matthews* (1883), 11 Q. B. D. 808; 52 L. J. Q. B. 772; *Re Clarke* (1887), 36 Ch. D. 348; 56 L. J. Ch. 981; *Re Reis* [1904], 2 K. B. 769; 73 L. J. K. B. 929; *Re Magnus* [1910], 2 K. B. 1049; 80 L. J. K. B. 71. The same principle applies to other property besides chattels. Thus, an assignment of future book debts, though not limited to book debts in any particular business, would be good, see *Tailby* v. *Off. Receiver* (1888), 13 A. C. 523; 58 L. J. Q. B. 75; also *Horwood* v. *Millars Timber Co.* [1917], 1 K. B. 305; 86 L. J. K. B. 190. So also the copyright in a story when written: *Ward, Lock & Co.* v. *Long* [1906], 2 Ch. 550; 75 L. J. Ch. 732; see also *Imperial Paper Mills* v. *Quebec Bank* [1914], 83 L. J. P. C. 67; *Re Lind* [1915], 2 Ch. 345; 84 L. J. Ch. 884.

Future book debts.

(*f*) *Lazarus* v. *Andrade* (1880), 5 C. P. D. 318; 49 L. J. C. P. 847; *Joseph* v. *Lyons* (1884), 15 Q. B. D. 280; 54 L. J. Q. B. 1; *Hallas* v. *Robinson* (1885), 15 Q. B. D. 288; 54 L. J. Q. B. 364.

interests are recognised by all branches of the Court ; (*g*) but, save where the Act of 1882 applies, an irrevocable power of attorney might be given to assign and register a bill of sale of after-acquired chattels.

would have priority. *Semble.*

What has been above stated as to the operation and effect of an assignment of after-acquired chattels is still applicable to a bill of sale not coming within the Act of 1882 ; but the effect of that Act is to prohibit altogether and render void a bill of sale by way of security of after-acquired chattels, except such as are described in s. 6 (2) : *Thomas* v. *Kelly* (1888), 13 A. C. 506 ; 58 L. J. Q. B. 66.

Act of 1882 prohibits in effect a mortgage of after-acquired chattels.

The interest of a tenant in tail in remainder in settled chattels is an equitable *thing in action*, and if he mortgages them the deed need not be registered : *Re Thynne* [1911], 1 Ch. 282 ; 80 L. J. Ch. 205.

Mortgage of chattels by tenant in tail in remainder.

(*g*) The observation of Lopes, J., in *Lazarus* v. *Andrade* (1880), 5 C. P. D. 318 ; 49 L. J. C. P. 847, that " property to be afterwards acquired may be not only in equity, but also at law, the subject-matter of an assignment for value," must be understood as merely meaning that the validity of such an assignment must now be recognised by every branch of the court.

DIVISION II.

BILLS OF SALE AND OTHER DISPOSITIONS OF PERSONAL CHATTELS.

No. I.

ASSIGNMENT *on sale of* PERSONAL CHATTELS *to a* PERSON *not in possession.*(*a*)

Parties

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS:—

Vendor is owner of chattels.

(1) The Vendor is the tenant of the Purchaser of a dwelling-house situated, &c. (*describing it*), under a tenancy which will expire on the —— day of —— next: And the Vendor is the owner of the furniture and effects in and about the said dwelling-house mentioned in the Schedule hereto:

Agreement for purchase.

(2) The Purchaser has agreed to purchase the said furniture and effects from the Vendor for the sum of £——, to be paid at once, but the said furniture and effects are to remain in the possession of the Vendor until the said —— day of —— next or other termination of the said tenancy:

Consideration

NOW, in consideration of the sum of £——, now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges), THIS DEED WITNESSETH as follows:—

Assignment of furniture, &c., to Purchaser.

1. THE Vendor hereby assigns unto the Purchaser:

ALL the furniture and effects mentioned in the Schedule hereto,

TO HOLD unto the Purchaser but so that the same shall remain in the possession of the Vendor until the —— day of —— next or other termination of the said tenancy:

(*a*) An assignment of chattels to a purchaser is unusual, as they are generally delivered to him, but cases may happen in which immediate possession cannot be conveniently given. This deed must be registered within seven clear days of its execution under s. 10 of the Bills of Sale Act, 1878; s. 8 of Act of 1882. Under s. 11 of the Act of 1878 the registration must be renewed every five years.

Registration and re-registration.

2. THE Vendor hereby covenants with the Purchaser that the Vendor will deliver possession of the said furniture and effects to the Purchaser on the —— day of —— next, or other the date on which the said tenancy may be determined; and will in the meantime keep the same in good repair and condition (reasonable wear and tear only excepted), and will also in the meantime keep the said furniture and effects insured [in the joint names of the Vendor and Purchaser] against loss or damage by fire in the sum of £—— at least, and in case of any loss or damage by fire will apply the money to be received in respect of the insurance thereof in restoring and reinstating the same. Covenant by Vendor to deliver possession and to repair and insure in meantime.

IN WITNESS, &c.

THE SCHEDULE.

Signed, sealed, and delivered by the above-named A. B. in the presence of me, L. M., of, &c.,(*b*) a solicitor of the Supreme Court of Judicature, the effect of the above-written deed having been first explained by me to the said A. B.(*c*)

L. M.

No. II.

ASSIGNMENT *of* GROWING CROPS *of* CORN *and* GRASS.(*d*)

THIS ASSIGNMENT is made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: Parties.

WHEREAS the Vendor has agreed to sell to the Purchaser the crops of corn and grass now growing on the pieces of land hereinafter described, and all the benefit and advantage thereof, at the price of £——: Agreement for sale.

(*b*) See Chapter II, p. 385, *supra*, as to the description of the witness.

(*c*) See s. 10 of Act of 1878. Though this section is repealed by s. 10 of the Act of 1882, bills of sale which do not secure the payment of money should still be attested in the manner prescribed by the Act of 1878: *Casson* v. *Churchley* (1884), 53 L. J. Q. B. 335; and see *Swift* v. *Pannell* (1883), 24 Ch. D. 210; 53 L. J. Ch. 341. A bill of sale may be executed by attorney, and the grantee is not necessarily excluded from being the attorney: *Furnivall* v. *Hudson* [1893], 1 Ch. 335; 62 L. J. Ch. 178. Attestation.

(*d*) This is a bill of sale, and must be attested and registered under the Act of 1878, see s. 7; see also Act of 1882, s. 6.

NOW THIS DEED WITNESSETH that, in consideration, &c. (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby grants and assigns unto the said C. D.

Assignment of crops,

ALL the crops of corn and grass which are now growing, arising, and being on the several pieces of land hereinafter described (namely) :—(*here describe the lands specifically*) :

with power for Purchaser to enter on land to remove same.

TOGETHER WITH FULL LIBERTY for the Purchaser and the servants, labourers, and other persons employed by him for that purpose, either with or without horses, vehicles and motors, from time to time, and at any times during the ensuing months of —— and ——, between the hours of —— in the morning and —— in the evening of each day of the said months respectively (excepting the Sundays which shall occur therein) to enter upon the said pieces of land, or any parts thereof, for the purpose of seeing the condition of the said crops, and for the purpose of reaping, mowing, and cutting the said crops, and removing the same respectively, and also to do all such other acts and things as may be necessary or required for the purpose of obtaining the full benefit of this assignment,

TO HOLD unto the Purchaser absolutely.

IN WITNESS, &c.

Signed, sealed, and delivered, &c.

(*Attestation as in last Precedent.*)

No. III.

MEMORANDUM *of* RECEIPT *for* PURCHASE-MONEY *of* PERSONAL CHATTELS.(*e*)

Receipt.

I, A. B., of, &c. (*Vendor*), hereby acknowledge that I have received from C. D., of, &c. (*Purchaser*), the sum of £——, being the sum agreed to be paid by him to me for the purchase of the furniture and effects [*or* goods and chattels *or* movable plant, machinery and things, *or as the case may be*] in or about, &c., mentioned in the Schedule hereto, which furniture and effects [*or* goods and chattels, *or* movable plant, machinery and things,

Stamp.

(*e*) This is a simple receipt, which can be taken under a 2*d.* stamp, and passes no interest in the chattels, which have been effectually transferred to the purchaser by the delivery. It is not a bill of sale and does not require registration, see *Manchester, Sheffield, &c., Ry. Co.* v. *N. Central Wagon Co.* (1883), 13 A. C. 554 ; 58 L. J. Ch. 219.

or as the case may be] have been delivered by me to and are now in the possession of the said C. D.

Dated this —— day of ——, 19—.

THE SCHEDULE.

(Signed) A. B.

No. IV.

MEMORANDUM *of* RECEIPT *for* PURCHASE-MONEY *of* FURNITURE *and* EFFECTS *on Sale by a* HUSBAND *to his* WIFE.(*f*)

I, A. B., of, &c., acknowledge that I have this day received from C. B., my wife, out of her separate property, the sum of £——, being the sum agreed to be paid by her to me for the purchase of all the plate, plated articles, linen, china, books, pictures, furniture and other household effects in or about our dwelling-house (*describing it*). Receipt.

Dated this —— day of ——, 19—.

(Signed) A. B.

No. V.

ASSIGNMENT *of* FURNITURE *and* EFFECTS *by intended* HUSBAND *to* WIFE *before marriage.*(*g*)

THIS ASSIGNMENT, made, &c., BETWEEN A. B., of, &c. (*intended husband*), of the one part, and C. D., of, &c. (*intended wife*), of the other part : Parties.

WITNESSETH that, in consideration of the marriage intended shortly to be solemnised between the said A. B. and the said C. D., the said A. B. hereby assigns unto the said C. D., Assignment

ALL the furniture and effects in and about, &c.,

TO HOLD unto the said C. D. absolutely as from the date of the said intended marriage.

IN WITNESS, &c.

(*f*) This also is a simple receipt, and not a bill of sale requiring registration. It is assumed that there has been a parol contract for sale, and a payment in good faith of the purchase-money by the wife to the husband out of her separate estate before the receipt is given. A formal delivery of the chattels by the husband to the wife is unnecessary. As they will remain in the house in which they both reside, the possession after the sale will be deemed to be that of the wife : *Ramsay* v. *Margrett* [1894], 2 Q. B. 18 ; 63 L. J. Q. B. 513 ; see also *R.* v. *Murray* [1906], 2 K. B. 385 ; 75 L. J. K. B. 593 ; *French* v. *Gething* [1922], 1 K. B. 236 ; 91 L. J. K. B. 276.

(*g*) This, being a gift, must be by deed ; it can be executed as an escrow. As it is made in consideration of marriage, it is not a bill of sale, and need not be registered : Act of 1878, s. 4. For Precedent of settlement of furniture, see Vol. III.

No. VI.

ASSIGNMENT *of* CHATTELS *by* HUSBAND *to* WIFE *in consideration of a* COVENANT *by the* WIFE *to pay a certain* DEBT *of the* HUSBAND.(*h*)

Parties.

THIS ASSIGNMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Husband), of the one part, and C. B., his Wife (hereinafter called the Wife), of the other part:

Husband assigns furniture, &c., to wife.

WITNESSETH that, in consideration of the covenant by the Wife hereinafter contained, the Husband hereby assigns unto the Wife:

ALL the plate, plated articles, linen, china, books, pictures, furniture and household effects in and about the dwelling-house, &c. (*describing it*), in which the Husband and Wife reside,

TO HOLD unto the Wife absolutely as her separate property.

Covenant by wife to pay a debt owing from husband.

AND the Wife hereby covenants with the Husband that the Wife will, out of her separate property, on or before the —— day of —— next, pay to X. Y., of, &c., the sum of £——, owing to him from the Husband upon the security, &c. (*describe security*), so as to enable the said security to be discharged.

IN WITNESS, &c.

Signed, sealed, &c. (*as in Prec. I, p.* 389).

No. VII.

ASSIGNMENT *on* SALE *of a* REVERSIONARY INTEREST *in* PLATE *and other articles specifically bequeathed by a* WILL.(*i*)

Parties.

THIS ASSIGNMENT is made, &c., BETWEEN A. M., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part:

WHEREAS:—

Bequest of plate, &c., to wife for life, then to Vendor.

(1)—(2) (*Recite Will whereby certain plate and other articles were bequeathed to trustees in trust for the testator's wife, L. M., for life, and then for his only son, the Vendor, absolutely, and the*

Stamp.

(*h*) This is a bill of sale, and must be registered under the Act of 1878, see *Ex p. Cox* (1875), 1 Ch. D. 302. The stamp will be *ad valorem* as on a sale for the amount of the debt.

(*i*) This should be registered under the Act of 1878, though it may be treated as an assignment of an equitable thing in action: *Re Thynne* [1911], 1 Ch. 282; 80 L. J. Ch. 205. Notice in writing of the assignment must be given to the trustees of the will: L. P. Act, 1925, s. 137, or to a trust corporation nominated to keep a register of notices under s. 138.

Notice.

provisions, if any, in the Will as to an inventory and as to the insurance by the usufructuary ; also death and probate of Will) :

(3) The said L. M. (who was born on ——) is still living and the plate and other articles bequeathed as aforesaid are in her possession, and the particulars thereof are stated in an inventory made by the trustees of the said Will, a copy whereof is contained in the Schedule hereto :

(4) The Vendor has agreed to sell his reversionary interest in the said plate and other articles to the Purchaser at the price of £—— : Agreement for sale.

NOW THIS DEED WITNESSETH that, in consideration, &c. (*the receipt, &c.*), the Vendor, As Beneficial Owner, hereby assigns unto the Purchaser,

ALL the plate and other articles to which the Vendor is entitled in reversion expectant on the death of the said L. M. under the recited bequest [And the benefit of any insurances of the said plate and other articles effected or to be hereafter effected by the said L. M. or by the trustees against loss or damage by fire pursuant to the direction for that purpose contained in the said Will], Assignment of plate, &c., and benefit of insurance against fire to Purchaser.

TO HOLD unto the Purchaser absolutely, subject to the legacy duty which will be payable thereon at the death of the said L. M. Habendum.

IN WITNESS, &c.

THE SCHEDULE.

Signed, sealed, &c. (*as in Prec. I, p.* 389).

No. VIII.

ASSIGNMENT *of a* SHARE *of* FURNITURE, *&c., comprised in a specific bequest by one* CO-LEGATEE *to the* OTHERS.(*k*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c., of the one part, and C. B., of, &c., and D. B., of, &c., of the other part : WHEREAS :— Parties.

(1) and (2) (*Recite Will whereby the furniture, &c., in the testator's dwelling-house, was bequeathed to his three daughters,*

(*k*) This is a bill of sale within the meaning of the Act of 1878, but as the chattels will not, after the assignment, be in the possession or apparent possession (see *Re Eales* (1906), 54 W. R. 202) of the assignor, registration and the other formalities required by s. 8 may usually be dispensed with. It is true that if A. B. were afterwards to make another absolute assignment to a different person, who registered it, the latter would have priority, but it is assumed that such an improbable contingency may be disregarded. Notice

A. B., C. B., and D. B. equally ; death of testator, probate of Will, and assent by executor) :

Agreement to assign.

(3) It is part of a family arrangement that the said A. B. shall make such assignment as is hereinafter contained :

Assignment.

NOW THIS DEED WITNESSETH that the said A. B., in consideration of her natural love and affection for her sisters, the said C. B. and D. B., and for divers other good causes and considerations, hereby assigns and releases unto the said C. B. and D. B.,

ALL the share and interest of the said A. B. in the furniture, plate, plated articles, linen, china, books, pictures and household effects comprised in the recited bequest, or such of them as now remain in the said dwelling-house,

TO HOLD unto the said C. B. and D. B. equally.

IN WITNESS, &c.

No. IX.

BILL *of* SALE *of* CHATTELS *by way of* MORTGAGE, *being the* STATUTORY FORM.(*l*)

Parties.

THIS BILL OF SALE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (*m*) (hereinafter called the Lender), of the other part : WITNESSETH that, in consideration of the sum of £——, (*n*) now paid to the Borrower by the Lender (the receipt of which the Borrower hereby acknowledges (*o*)) (*or whatever else the consideration may be*), he, the Borrower, doth hereby assign (*p*) unto the Lender, his executors, administrators and assigns,

Assignment of chattels to Mortgagee to secure payment of principal money and interest.

ALL AND SINGULAR the several chattels and things specifically described in the Schedule hereto annexed, by way of security for

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in writing of the release must be given to the executors of the Will if they have not parted with the chattels : L. P. Act, 1925, s. 137.

Power for Court to order a division.

Under *ib.*, s. 188, the Court has power to order a division of chattels among the persons interested in shares. The personal representatives have a power of appropriation under Ad. of E. Act, 1925, s. 41, and a power to value under T. Act, 1925, s. 22 (3).

(*l*) See Schedule to Act of 1882, and s. 9 of that Act.

(*m*) The grantee's address must be inserted : *Altree* v. *A.* [1898], 2 Q. B. 267 ; 67 L. J. Q. B. 882.

(*n*) As to what is proper consideration, see Chap. II, p. 381, *supra*.

(*o*) The receipt must be acknowledged : *Davies* v. *Jenkins* [1900], 1 Q. B. 133 ; 69 L. J. Q. B. 187.

(*p*) Covenants for title must not be inserted : *Ex p. Stanford* (1886), 17 Q. B. D. 259 ; 55 L. J. Q. B. 341.

the payment of the sum of £—— and interest thereon at the rate of £— per cent. per annum (*or whatever else may be the rate*),

Agreement by Borrower to pay principal money and interest.

AND the Borrower doth further agree and declare that he will duly pay to the Lender the principal sum aforesaid, together with the interest then due, by equal payments of £——, on the —— day of —— and the —— day of —— (*q*) (*or whatever else may be the stipulated times of payment*),

AND the Borrower doth also agree with the Lender that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*),

Chattels to be liable to seizure for causes specified in s. 7.

PROVIDED ALWAYS, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the Lender for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.(*r*)

IN WITNESS, &c.

THE SCHEDULE.

Signed and sealed by the said A. B. in the presence of me,

E. F. (*add witness's name, address, and description*).(*s*)

No. X.

BILL *of* SALE *of* CHATTELS *by way of* MORTGAGE, *being the* STATUTORY FORM *with the blanks filled up.*(*t*)

Parties.

THIS BILL OF SALE, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Lender), of the other part:

WITNESSETH that in consideration of the sum of £——, (*u*)

Demand.

(*q*) The money must not be payable on demand: *Hetherington* v. *Groome* (1884), 13 Q. B. D. 789; 53 L. J. Q. B. 576; *Sibley* v. *Higgs* (1885), 15 Q. B. D. 619; 54 L. J. Q. B. 525; but may be payable "on or before" a certain date: *De Braam* v. *Ford* [1900], 1 Ch. 142; 69 L. J. Ch. 82. The amount of interest and the period when the money is payable must be certain: *Attia* v. *Finch* (1904), 91 L. T. 70; and see *Linfoot* v. *Pockett* [1895], 2 Ch. 835; 64 L. J. Ch. 752.

(*r*) The proviso must be inserted: *Thomas* v. *Kelly* (1889), 13 A. C. at p. 519, *per* Lord Macnaghten; 58 L. J. Q. B. 66.

(*s*) See Chap. II, p. 385, *supra*, as to the description of the witness.

(*t*) See notes to last Precedent.

(*u*) This must not be less than £30: Act of 1882, s. 12; *Davis* v. *Usher* (1884), 12 Q. B. D. 490; 53 L. J. Q. B. 422; *Darlow* v. *Bland* [1897], 1 Q. B.

Assignment of chattels to Mortgagee to secure payment of principal money and interest.

now paid to the Borrower by the Lender (the receipt of which sum the Borrower hereby acknowledges),(*x*) he, the Borrower,(*y*) doth hereby assign unto the Lender, his executors, administrators, and assigns,

ALL AND SINGULAR the several chattels and things specifically described in the Schedule hereto annexed by way of security for the payment of the sum of £—— and interest thereon at the rate of £— per cent. per annum :

Agreement by Borrower to pay principal money and interest;

AND the Borrower doth further agree and declare that he will duly pay to the Lender the principal sum aforesaid, together with the interest then due, on the —— day of —— next, and if the said principal sum is not paid on that day, then will pay interest thereon, or on so much thereof as shall for the time being remain owing, at the rate aforesaid, half-yearly on the —— day of —— and the —— day of —— :(*z*)

To insure against fire;

AND the Borrower doth also agree (*a*) with the Lender, that he will at all times during the continuance of this security keep the said chattels and things insured against loss or damage by fire, in the sum of £—— at least, in the —— Insurance Office, or in some other insurance office to be approved of by the Lender, his personal representatives or assigns : And also duly and

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125; 66 L. J. Q. B. 157. If the consideration is an antecedent debt, say: in consideration of the sum of £——, now owing from the said A. B. to the said C. D.; and see Chap. II, p. 381, *supra*.

(*x*) The receipt must be acknowledged : *Davies* v. *Jenkins* [1900], 1 Q. B. 133; 69 L. J. Q. B. 187.

(*y*) Covenants for title must not be inserted : *Ex p. Stanford* (1886), 17 Q. B. D. 259; 55 L. J. Q. B. 341.

Variation where money payable by instalments.

(*z*) If the money is to be paid by instalments, the following form of covenant may be substituted :—

AND the Borrower further agrees and declares that he will pay to the Lender the said principal sum of £—— by equal monthly instalments of £—— each, the first instalment to be paid on the 1st day of —— next, and the remaining instalments to be paid on the first day of every subsequent month until the whole principal money shall be paid, and also will, on the same monthly days respectively, pay to the Lender the interest then due on the principal sum for the time being remaining unpaid :

PROVIDED ALWAYS, that if any monthly instalments shall be in arrear for fourteen days, the whole of the principal money then remaining unpaid shall become payable immediately.

(*a*) These covenants can be inserted, and do not affect the validity of the bill of sale, see Chapter II, p. 382, *supra*.

regularly pay the rent, rates and taxes payable by him in respect of the messuage or dwelling-house in which the said chattels and things are ; and also will produce to the Lender, his personal representatives or assigns, upon demand in writing,(*b*) the last receipt for such rent, rates or taxes, and the policy of such insurance as aforesaid and the receipt for the last premium payable in respect thereof, unless he shall have a reasonable excuse for not doing so : To pay rent, rates and taxes, and produce receipts.

AND that if default shall at any time be made by the Borrower in effecting or keeping on foot such insurance, or in paying the said rent, rates and taxes, it shall be lawful for the Lender, his personal representatives or assigns, to insure and keep insured the said chattels and things, or to pay the said rent, rates and taxes (as the case may be), and that all money expended by him or them for any of the purposes aforesaid, together with interest thereon at the rate of £5 per cent. per annum from the time of the same having been expended, shall on demand be repaid to him or them by the Borrower, and until such payment shall be a charge on all the said chattels and things :(*c*) Power for Mortgagee to insure, &c., in case of Borrower's default.

PROVIDED ALWAYS,(*d*) that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the Lender for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882. Chattels to be liable to seizure for causes specified in s. 7.

IN WITNESS, &c.

THE SCHEDULE.(*e*)

Signed and sealed by the said A. B. in the presence of me,

E. F. (*add witness's name, address, and description*).

(*b*) See *Cartwright* v. *Regan* [1895], 1 Q. B. 900 ; 64 L. J. Q. B. 507.

(*c*) See *Ex p. Stanford* (1886), 17 Q. B. D. 259 ; 55 L. J. Q. B. 341.

(*d*) A power to seize and take possession, and to sell after five days, may be conferred in express terms, see cases cited in Chapter II, p. 380, *supra*. But it is unnecessary to do so, as these powers are conferred by ss. 7 and 13 of the Act of 1882 by implication, see *Johnson* v. *Diprose* [1893], 1 Q. B. 512 ; 62 L. J. Q. B. 291. Power to sell.

(*e*) The schedule should contain a specific description of the chattels, *i.e.*, they should be described with such particularity as is used in an ordinary business inventory of such chattels, see *Witt* v. *Banner* (1887), 20 Q. B. D. 114 ; 57 L. J. Q. B. 141 ; *Carpenter* v. *Deen* (1889), 23 Q. B. D. 566 ; *Hickley* v. *Greenwood* (1890), 25 Q. B. D. 277 ; 59 L. J. Q. B. 413 ; and *Davidson* v. *Carlton Bk.* [1893], 1 Q. B. 82 ; 62 L. J. Q. B. 111, in which it was held that "450 pictures in gilt frames," and "twenty-one milch cows," was not sufficient ; but "roan horse Drummer, brown mare and foal, three trade carts," Description ; Schedule.

No. XI.

TRANSFER *of a* BILL OF SALE (*by endorsement*).(*f*)

Parties. THIS TRANSFER is made, &c., BETWEEN the within-named C. D. (hereinafter called the Transferor), of the 1st part, the within-named A. B. (hereinafter called the Borrower), of the 2nd part, and E. F., of, &c. (hereinafter called the Lender), of the 3rd part: WHEREAS:—

Registration. (1) The within-written Deed (hereinafter called the Bill of Sale) was duly registered as a bill of sale on the —— day of ——, 19—:

State of debt. (2) The principal sum of £—— secured by the Bill of Sale still remains owing, but all interest thereon has been paid up to the date hereof:

Agreement for transfer. (3) The Transferor has, at the request of the Borrower, agreed to pay to the Lender, the sum of £—— on having a transfer of the Bill of Sale:

Assignment of principal money and chattels. NOW THIS DEED WITNESSETH that, in consideration of the sum of £—— paid to the Transferor by the Lender (the receipt whereof the Transferor hereby acknowledges), the Transferor, As Mortgagee, hereby assigns unto the Lender:

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and "1,800 volumes of books as per catalogue" (which was not registered), was sufficient. If the bill of sale is of growing crops they should be described in the schedule, and not in the body of the deed, thus:—

Crops. ALL the crops of grass, wheat and barley, and other crops now growing in or upon the farm and lands called ——, situated, &c., now in the occupation of the Borrower.

If it is intended to include in the bill of sale fixtures, plant or machinery, to be substituted for the existing fixtures, &c., the following words should be added in the schedule after the specific description of the existing things:—

Fixtures substituted. AND ALSO all the fixtures, plant and trade machinery which may be used in, attached to, or brought upon the said —— (*house or land*), in substitution for any of the like fixtures, plant and trade machinery above specifically described.

Things to be replaced. Where the chattels comprised in a bill of sale are of a kind which requires to be replaced from time to time by the substitution of other similar chattels, a more specific description of them in the schedule is necessary than in the case of chattels which do not require to be replaced with the same degree of frequency: *Davies* v. *Jenkins* [1900], 1 Q. B. 133; 69 L. J. Q. B. 187.

(*f*) This does not require registration, see Act of 1878, s. 10; *Horne* v. *Hughes* (1881), 6 Q. B. D. 676; *Ex p. Turquand* (1885), 14 Q. B. D. 636; 54 L. J. Q. B. 242. See *Marshall and Snelgrove* v. *Gower* [1923], 1 K. B. 356; 92 L. J. K. B. 499. The statutory short form of transfer of mortgages is not applicable: L. P. Act, 1925, s. 114.

THE principal sum of £—— secured by the Bill of Sale and all interest henceforth to become due thereon, And also the chattels and things comprised in the Bill of Sale,

TO HOLD unto the Lender subject as to the said chattels and things to the right of redemption subsisting therein under the Bill of Sale.

IN WITNESS, &c.

No. XII.

MEMORANDUM *of* SATISFACTION ENDORSED *on a* BILL *of* SALE.(*g*)

MEMORANDUM that all the money secured by the within-written deed has been satisfied.

Dated this —— day of ——.

(Signed) C. D.

WITNESS,

No. XIII.

CONSENT *by* GRANTEE *of* BILL *of* SALE *to an* ORDER *to enter* SATISFACTION.

In the High Court of Justice,
King's Bench Division.

I, C. D., of, &c., DO HEREBY CONSENT to an order that a memorandum of satisfaction be written upon the copy of the bill of sale given to secure the sum of £—— and interest dated the —— day of ——, 19—, made between A. B. of the one part and me of the other part, and filed on the —— day of ——, 19—, the debt for which the said bill of sale was given as a security having been satisfied.

Dated the —— day of ——, 19—.

(Signed) C. D.

No. XIV.

AFFIDAVIT *to be* FILED *with a* BILL OF SALE.(*h*)

In the High Court of Justice,
—— Division 19—. No. —.

I, L. M., of ——, in the County of ——, make oath and say as follows :—

(*g*) See Act of 1878, s. 15.

(*h*) Section 10 of the Act of 1878, which is the same in this respect as s. 1 of the (repealed) Act of 1854 (17 & 18 Vict. c. 36), requires that the affidavit to be filed with the bill of sale shall state the residence and occupation of the assignor and every attesting witness. Occupation of assignor and attesting witnesses.

1. THE paper writing hereunto annexed and marked A is true copy (*i*) of a bill of sale, and of the schedule or inventory thereto annexed or therein referred to, and of the [*or* every, *if there are two attesting witnesses*] attestation of the execution thereof, as made and given and executed by A. B.

2. THE said bill of sale was made and given by the said A. B. on the —— day of ——, 19—.

3. I was present and saw the said A. B. duly execute the said bill of sale on the said —— day of ——, 19—.

"Occupation."

The word "occupation" means the business in which a man is usually engaged to the knowledge of his neighbours so that he can easily be identified by local inquiries: *Luckin* v. *Hamlyn* (1870), 21 L. T. 366; *Neverson* v. *Seymour* (1908), 97 L. T. 788; *Barron* v. *Potter* [1915], 3 K. B. 593; 84 L. J. K. B. 2008; *Re Boddington* (1915), 84 L. J. K. B. 2119. A discrepancy in the addresses given in the bill of sale and the affidavit does not necessarily affect its validity: *Simmons* v. *Woodward* [1892], A. C. 100; 61 L. J. Ch. 252; but see *Marks* v. *Derrick* (1899), 80 L. T. 60.

Insufficiency of description.

It has been held that "gentleman" is not a sufficient description of a solicitor or of a solicitor's clerk: *Tuton* v. *Sanoner* (1858), 27 L. J. Ex. 293; *Dryden* v. *Hope* (1860), 3 L. T. 280; or of a clerk in the audit office: *Allen* v. *Thompson* (1856), 1 H. & N. 15; 25 L. J. Ex. 249; or of any person having a fixed profession, business, or avocation: *Adams* v. *Graham* (1864), 33 L. J. Q. B. 71; *Beales* v. *Tenant* (1860), 6 Jur. (N.S.) 628; 29 L. J. Q. B. 188; but it is not necessary to mention an avocation which has only been temporarily or casually followed, or one in which the grantor is not at present actively engaged, being out of employment: *Brodrick* v. *Scale* (1871), L. R. 6 C. P. 98; 40 L. J. C. P. 130; *Smith* v. *Cheese* (1875), 1 C. P. D. 60; 45 L. J. C. P. 156; *Morewood* v. *South Yorkshire Co.* (1859), 3 H. & N. 798; 28 L. J. Ex. 114. A lessee and manager of a theatre, or a merchant, is not properly described as "Esquire": *Ex p. Hooman* (1870), L. R. 10 Eq. 63; 39 L. J. Bk. 4; *Re O'Connor* (1872), 27 L. T. 27; nor a clerk in an accountant's department as an "accountant": *Larchin* v. *N. W. Deposit Bk.* (1875), L. R. 10 Ex. 64; 44 L. J. Ex. 71. On the other hand, a clerk in the Admiralty has been held to be sufficiently described as a "Government clerk": *Grant* v. *Shaw* (1872), L. R. 7 Q. B. 700; 41 L. J. Q. B. 305; and a grantor who has been in business until a few weeks before the bill of sale and was then in treaty for another business, was held to be properly described as "widow," see *Re Esther Davey* [1881], W. N. 56, 109; 45 L. T. 268. But a dressmaker is not properly described as a "married woman": *Kemble* v. *Addison* [1900], 1 Q. B. 430; 69 L. J. Q. B. 299.

(*i*) See *Coates* v. *Moore* [1903], 2 K. B. 140; 72 L. J. K. B. 539; also *Sharp* v. *McHenry* (1887), 38 Ch. D. 427; 57 L. J. Ch. 961.

Residence within meaning of Act.

The residence meant by the Act is the place where the person carries on business and can be found during the day, not the place where he merely sleeps at night: *Attenborough* v. *Thompson* (1858), 2 H. & N. 559; 27 L. J. Ex. 23; *Blackwell* v. *England* (1858), 8 El. & Bl. 541; 27 L. J. Q. B. 124; *Briggs* v. *Boss* (1868), L. R. 3 Q. B. 268; 37 L. J. Q. B. 101; *Hewer* v. *Cox* (1861), 30 L. J. Q. B. 73; *Blount* v. *Harris* (1879), 4 Q. B. D. 603; 48 L. J. Q. B. 159. Where a house is in a street, the number must be accurately stated: *Murray* v. *Mackenzie* (1875), L. R. 10 C. P. 625; 44 L. J. C. P. 313; but if the description given is such as cannot mislead creditors, an unimportant mistake will not be fatal, as where New Street, Blackfriars, was stated as

4. THE said A. B. resides at, &c. (*state residence at time of swearing affidavit*), and is, &c. (*state occupation*).

5. THE name L. M. subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in my proper handwriting.(*k*)

6. I reside at ——, in the County of ——, and am (*occupation*).

SWORN, &c.

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in the County of Middlesex instead of in the City of London: *Hewer* v. *Cox, supra*; *Ex p. M'Hattie* (1879), 10 Ch. D. 398; 48 L. J. Bk. 26.

A description of the residence of the attesting witness in the introductory part of the affidavit is sufficient: *Blaiberg* v. *Parke* (1882), 10 Q. B. D. 90; 52 L. J. Q. B. 110.

Description of company.

An affidavit filed with a bill of sale, describing a company by its name, and stating the address of its principal office, is a sufficient compliance with the Act: *Shears* v. *Jacob* (1866), L. R. 1 C. P. 513; 35 L. J. C. P. 241.

Affidavit must contain the description either expressly or by reference.

It is not sufficient that the bill of sale contains a description of the residence and occupation of the assignor and the attesting witnesses; the affidavit filed with the bill of sale must contain such description also, either expressly or by reference. Thus, it is not sufficient to state in the affidavit that the grantor is the person named in the bill of sale, unless it be averred that he is truly described therein: *Hatton* v. *English* (1857), 7 El. & Bl. 94; 26 L. J. Q. B. 161; *Pickard* v. *Bretz* (1859), 5 H. & N. 9; 29 L. J. Ex. 18; *Foulger* v. *Taylor* (1860), 5 H. & N. 202; 29 L. J. Ex. 154.

Description of residence of grantor.

The description of the residence of the grantor to be stated in the affidavit should be his residence at the time of swearing the affidavit, and not at the time of executing the bill of sale: *Button* v. *O'Neill* (1879), 4 C. P. D. 354; 48 L. J. C. P. 368. But in a case where between the date of the execution of the bill of sale and the date of the affidavit the maker left his residence and sailed for America, it was held that the affidavit which described him as in the bill of sale was sufficient: *Re Hewer* (1882), 21 Ch. D. 871; 51 L. J. Ch. 904.

Affidavit must state that attesting witness was present.

The affidavit must also state that the attesting witness was present at the time of the execution by the grantor and witnessed the due execution by him: *Ford* v. *Kettle* (1882), 9 Q. B. D. 139; 51 L. J. Q. B. 558; *Sharpe* v. *Birch* (1881), 8 Q. B. D. 111; 51 L. J. Q. B. 64.

Where there are two residences.

If the grantee lives and carries on business at A, and has also other places of business, he is sufficiently described in the affidavit as residing at A, without any mention of the other places: *Greenham* v. *Child* (1890), 24 Q. B. D. 29; 59 L. J. Q. B. 27.

Affidavit on re-registration.

The affidavit made on the re-registration of a bill of sale must correspond with that made on the original registration: *Ex p. Webster* (1883), 22 Ch. D. 136; 52 L. J. Ch. 375.

Affidavit must be sworn before independent solicitor.

An affidavit of the execution of a bill of sale sworn before the solicitor acting for the grantee is void: *Baker* v. *Ambrose* [1896], 2 Q. B. 372; 65 L. J. Q. B. 589.

(*k*) *If there are two attesting witnesses, substitute for paragraph* 5 :—

5. THE names L. M. and G. H. subscribed as witnesses attesting the execution of the said bill of sale are respectively in the handwriting of me and of the said G. H. I reside at ——, and am, &c., and the said G. H. resides at ——, and is, &c.

No. XV.

AGREEMENT *accompanying a* PLEDGE *of* CHATTELS *to secure a* DEBT.(*l*)

Parties.

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Lender), of the other part:

Loan and deposit of chattels with lender.

WHEREAS the Lender has this day lent to the Borrower the sum of £——, and the Borrower has deposited with the Lender the chattels mentioned in the Schedule hereto:

Agreement by Borrower to pay loan with interest.

NOW IT IS HEREBY AGREED as follows:—

1. THE Borrower shall, on the —— day of —— next, pay to the Lender the sum of £——, with interest thereon at the rate of £—— per cent. per annum, from the date hereof, and if the said sum shall not be paid on that day the same shall continue to bear interest at the rate aforesaid until paid off.

Chattels to be a pledge for repayment and Lender to have power to sell in case of default.

2. THE Lender shall retain the chattels deposited with him as aforesaid as a pledge for the payment of the said debt and interest, and if default shall be made in payment of the said debt and interest on the said —— day of —— next, the Lender may at any time thereafter sell the said chattels or any of them, either by public auction or private contract, with liberty to buy in at any sale by auction, and to rescind or vary any contract for sale, and to resell without being answerable for any loss arising thereby.

Trusts of sale money.

3. THE Lender shall, out of the proceeds of such sale, in the first place pay and retain all costs and expenses incurred by him in or about any such sale or attempted sale, or otherwise in relation to the security, and in the next place pay and retain all money owing to him under this agreement, and shall pay the surplus (if any) to the Borrower.

Lender to be at liberty to insure against fire and to be repaid expense of insurance.

4. THE Lender shall be at liberty, if he thinks fit, to insure the said chattels, or any of them, against loss or damage by fire or against any other risk he may think expedient to cover, and all money expended by him in or about such insurance shall be repaid to him on demand by the Borrower, with interest thereon at the rate aforesaid, from the time of expending the money, and the principal and interest shall also be payable out of the proceeds of the sale of the said chattels in like manner as the said debt of £—— and the interest thereon.

(*l*) This is not a bill of sale, and does not require registration.

5. THE Lender shall not be answerable for any loss or injury to the said chattels during the continuance of this security, unless the same shall arise from his own wilful act or default. Lender not to be answerable for injury to chattels.

6. IN this agreement, where the context admits, the expressions the Borrower and the Lender include their respective personal representatives or other persons deriving title under them respectively. Definitions.

AS WITNESS the hands of the parties hereto.

THE SCHEDULE.

DIVISION III.

BONDS.

No. I.

BOND *by* ONE *or by* SEVERAL *for* PAYMENT *of* MONEY *by* INSTALMENTS.(*a*)

Bond. THIS BOND, made this —— day of ——, 19—, by A. B., of &c. (hereinafter called the Obligor) [*or* A. B., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Obligors)], WITNESSETH that the Obligor is [Obligors are] held and firmly bound (*b*) to C. D., of, &c. (*obligee*), in the sum of £—— (*twice the amount of the sum to be repaid*), to be paid to the said C. D. [for which payment the Obligors bind themselves and every two and one of them (*c*) jointly and severally by this Bond]. SEALED with the seal of the Obligor [*or* the seals of the Obligors] the day and year first above written :—

Condition of Bond. NOW THE CONDITION of the above-written Bond is such, that if the Obligor [Obligors or any or either of them] shall pay to the said C. D. the sum of £—— by the instalments following

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(*a*) For general purposes a covenant shows the intention of the parties better than a bond, and is now more frequently resorted to ; however, a few precedents may still be of value to meet simple cases.

Stamps on Bonds. By the Stamp Act, 1891, the stamp duties chargeable on bonds for payment or repayment of money or the transfer or re-transfer of stock are the same as on a mortgage for the same purposes ; see " Stamps on Mortgages," p. 64, *supra*. The stamp duties chargeable where the bond is to secure an annuity, except upon the original creation thereof by way of sale, are stated under the head of " Stamps on Settlements," in Vol. III. A bond of any kind not specifically charged with any duty is liable to a 10*s*. stamp, unless the amount limited to be recoverable does not exceed £300, in which case the duty will be the same *ad valorem* duty as on a bond for the amount limited. See generally Alpe, 18th ed., Highmore, 4th ed.

Binding effect. (*b*) Under the L. P. Act, 1925, s. 80, a bond made after 1881 binds the real estate as well as the personal estate of the obligor so far as a contrary intention is not expressed.

Joint obligation. (*c*) The words " every two and one of them " may be omitted ; see O. 16, rr. 4, 6.

(that is to say), the sum of £——, part thereof, on the —— day of —— next, the sum of £——, other part thereof, on the —— day of ——, 19—, and the sum of £——, residue thereof, on the —— day of ——, 19—, and shall also at the several times hereinbefore appointed for payment of the said instalments of the said sum of £—— pay to the said C. D. interest on the said sum of £——, or such part thereof as for the time being remains unpaid, at the rate of £—— per cent. per annum (such interest to commence and be computed from the date of the above-written Bond), Then the above-written Bond shall be void, otherwise the same shall remain in full force.

Signed, sealed, &c.

No. II.

BOND *for* SECURING *the* PAYMENT *of an* ANNUITY.(*d*)

THIS BOND, made, &c., by A. B., of, &c. (hereinafter called the Obligor), WITNESSETH that the Obligor is held and firmly bound to C. D., of, &c., in the sum of £—— (*twice the amount of the purchase-money*). SEALED with the seal of the Obligor the day and year first above written: WHEREAS:—

Agreement to sell an Annuity.

(1) The Obligor has agreed to sell to the said C. D. an annuity of £—— during his life for the sum of £——, such annuity to be secured by the bond of the Obligor:

(2) Pursuant to the said agreement, the said C. D. has paid to the Obligor the sum of £——, and the Obligor has executed the above-written Bond:

Condition of Bond.

NOW THE CONDITION of the above-written Bond is such that if the Obligor shall pay to the said C. D. during his life one annuity or yearly sum of £——, to accrue from day to day, but to be paid by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first quarterly payment of the said annuity to be made on the —— day of ——, Then the above-written Bond shall be void, otherwise the same shall remain in full force.

Signed, sealed, &c.

Stamp.

(*d*) The stamp duty on this bond will be the same *ad valorem* duty as on a conveyance in consideration of the purchase-money to be paid for the annuity: Stamp Act, 1891, s. 60; Fin. (1909-10) Act, 1910, s. 73.

It is more usual that the transaction should take the form of the grant of an annuity with a covenant to pay.

No. III.

BOND *for quiet* ENJOYMENT *given by* VENDOR *to* PURCHASER *taking a doubtful* TITLE.

(*BOND from A. B., defined as the Obligor, to C. D., as in last Precedent*) : WHEREAS :—

Conveyance of property to obligee.

(1) By a Conveyance, bearing even date with but executed before this Bond, and made, &c., certain freehold property, known as ——, in the County of ——, was conveyed or expressed to be conveyed by the Obligor to the said C. D. in fee simple :

As to the obligor's title.

(2) The said property was formerly the property of G. H., and was conveyed in exchange by him to W. M., deceased, in fee simple, by a Deed dated, &c., and made, &c., and the title of the Obligor to the said property is derived under the Will, dated, &c., and proved, &c., of the said W. M., and under an Assent in writing in favour of the Obligor by the executors of the said testator, dated the —— day of —— (made for giving legal effect to an appointment to the Obligor under a power contained in the said Will) :

Agreement for Bond.

(3) It was agreed that in addition to the ordinary covenants for title implied by law in the said conveyance, the Obligor should, for the satisfaction and indemnity of the said C. D., execute the above-written Bond, subject to the condition hereinafter contained :

Condition of Bond.

NOW THE CONDITION of the above-written Bond is such, that if the said C. D. and the persons deriving title under him shall from time to time, and at all times hereafter, hold, possess, and enjoy the property comprised in the said Conveyance of even date herewith, and every part thereof, and receive the rents and profits of the same, and of every part thereof, for his and their own use, without any lawful interruption, claim, or demand whatsoever of, from, or by any person or persons whomsoever, and free from all adverse estates, titles, liens, charges, and incumbrances whatsoever, Then the above-written Bond shall be void, otherwise the same shall remain in full force.(*e*)

Signed, sealed, &c.

Indemnity against defects.

(*e*) See also Special Conditions of Sale in Vol. I, for other modes of indemnifying a purchaser. Unless the blot on the title necessarily appears in the conveyance, it is proper for the indemnity to be taken separately. As to the effect of recitals on the condition of a bond, see *Australian Joint Stock Bank* v. *Bailey* [1899], A. C. 396 ; 68 L. J. P. C. 95 ; Norton on Deeds, Chap. XI.

Purchaser's rights.

It is essential that the matters covered by L. P. Act, 1925, s. 42, should be cleared up at the expense of the vendor, accordingly it is assumed in Prec. III

No. IV.

BOND *of* INDEMNITY *by a* VENDOR *to a* PURCHASER *on account of the* LOSS *of a* TITLE DEED.

(BOND from A. B., defined as the Obligor, to C. D., see Prec. II. Recite conveyance to C. D. (purchaser) of even date as in last Precedent.)

(2) A Deed (hereinafter called the Conveyance of 19—), dated the —— day of ——, 19—, and made between, &c. (*parties*), whereby the property comprised in the said Conveyance of even date herewith was (as is represented by the Obligor) conveyed to the Obligor in fee simple, has been diligently sought for by the Obligor but cannot be found: Loss of Conveyance.

(3) It was agreed that for the satisfaction and indemnity of the said C. D., and in addition to the ordinary covenants for title implied by law in the said Conveyance of even date herewith the Obligor should execute the above-written Bond, subject to the condition hereinafter contained: Agreement for indemnity

NOW THE CONDITION of the above-written Bond is such, that if the Obligor shall at all times hereafter save harmless and keep indemnified the said C. D., and the persons deriving title under him from and against all proceedings, losses (including losses attributable to improvements which may be made on the property), costs, charges, expenses, claims, and demands whatsoever in respect of the property comprised in the said Conveyance of even date herewith to which he or they would not have been subject or liable— Condition of Bond.

(i) if the Conveyance of 19— (being an absolute conveyance of the said property to the Obligor in fee simple), had been duly delivered to the said C. D. upon the completion of the purchase, or

(ii) if it shall appear that the Conveyance of 19— is not in effect an absolute conveyance of all the said property to the Obligor for an estate in fee simple in possession, free from incumbrances and equities, or

(iii) if the Conveyance of 19— has been deposited with any person by way of security, or

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that the defect relates to some stale claim which is probably rectified by that Act, but that the purchaser requires an indemnity against possible proceedings. Under that section the purchaser is entitled to have the legal estate conveyed to him free from all over-reachable equitable interests.

(iv) if the property therein comprised has been otherwise dealt with in such a manner as to prejudice or affect the absolute title of the Obligor to the said property or any part thereof:

THEN, and in such case, the above-written Bond shall be void, otherwise the same shall remain in full force.

Signed, sealed, &c.

No. V.

BOND *by* SURVIVING PARTNER *for* PAYMENT *of the* ESTIMATED VALUE *of* DECEASED PARTNER'S SHARE *by* INSTALMENTS *to his* PERSONAL REPRESENTATIVES, *and for* INDEMNIFYING *his* ESTATE *against the* PARTNERSHIP LIABILITIES.

(*BOND from A. B., defined as the Obligor, to C. D., of, &c., and E. F., of, &c., the personal representatives, see Prec. I, p.* 404):

WHEREAS:—

Articles of Partnership for making surviving partner purchaser of deceased partner's share.

(1) By Articles of Partnership made on the —— day of ——, between the Obligor, of the one part, and G. H., of the other part, it was, amongst other things, provided that the Obligor and the said G. H. should, from thenceforth, become and be partners in the trade or business of ——, under the style of ——, for the term of —— years, and also that in case either of the said partners should die before the expiration of the said term, then the surviving partner should, within three months after the death of the partner so dying, settle with the personal representatives of the deceased partner all accounts and matters relating to the said partnership, and that such surviving partner [should pay to the personal representatives of such deceased partner such a sum as by the books of the firm should appear to have been contributed by such deceased partner to the capital of the firm at his death, and that such surviving partner should be considered to be the purchaser of such share of the deceased partner in the said capital at such sum as aforesaid, and that such surviving partner] should purchase the share of the deceased partner in the [residue of the] property, credits, and effects of the said partnership, and that the value of such assets should be ascertained by two persons, one to be chosen by the surviving partner, and the other by the personal representatives of the deceased partner, and that the surviving partner should enter into a bond for securing to the personal representatives of the

Bond to be entered into

deceased partner the amount of such [sum and] valuation by four equal instalments at the respective periods of six, twelve, eighteen, and twenty-four months next after the death of such partner with interest at the rate of £— per cent. per annum from such death, and also a bond for indemnifying the estate of the deceased partner against the debts and liabilities of the said partnership: by surviving partner for payment of estimated sum by instalments.

(2) The said G. H. died on the —— day of ——, having duly made his Will dated, &c., whereby he appointed the said C. D. and E. F. to be his executors, who on the —— day of ——, duly proved the said Will in the Principal Probate Registry [*or*, died on —— intestate and on —— Letters of Administration to his estate were granted by the —— Probate Registry to the said C. D. and E. F.]: Death of deceased partner, appointing executors.

[(3) By the books of the said partnership it appears that the said G. H. had contributed the sum of £—— sterling to the capital of the partnership at his death:] [Contribution of deceased partner to capital.]

(4) Pursuant to the provisions contained in the said Articles, the value of the share of the deceased partner in the said property, credits, and effects of the partnership has been ascertained to be the sum of £—— [making with the aforesaid sum of £—— the aggregate sum of £——]: Sum at which his share is estimated.

(5) In further pursuance of the said provision, the Obligor has executed the above-written Bond:

NOW THE CONDITION of the above-written Bond is such that, if the Obligor shall pay to the said C. D. and E. F., as part of the estate of the said G. H., deceased, the sum of £——, at the times and by the instalments following (that is to say): the sum of £—— on the —— day of ——, the sum of £—— on the —— day of ——, the sum of £—— on the —— day of ——, and the sum of £—— on the —— day of ——, and also on the same days interest on the said sum of £—— or such part thereof as for the time being remains unpaid, at the rate of £— per cent. per annum, from the death of the said G. H., and shall at all times, as from the date of such death, save harmless and keep indemnified the said C. D. and E. F. respectively, and the estate and effects of the said G. H., deceased, from and against all debts and liabilities whatsoever, in respect of the said partnership business, Then the above-written Bond shall be void, otherwise the same shall remain in full force. Condition of Bond.

Signed, sealed, &c.

No. VI.

BOND *with two* SURETIES *for the* FAITHFUL PERFORMANCE *of* DUTIES *on* APPOINTMENT *to a* RESPONSIBLE OFFICE.(*f*)

THIS BOND, made this —— day of ——, 19—, by A. B., of, &c. (hereinafter called the Obligor), and by C. D., of, &c., and E. F., of, &c. (hereinafter called the Sureties): WITNESSETH that the Obligor and the Sureties are held and firmly bound to G. H., of, &c. (*obligee*), in the sum of £— —, to be paid to the said G. H., for which payment the Obligor and the Sureties bind themselves and every two and one of them jointly and severally by this Bond. Sealed with the seals of the Obligor and Sureties the day and year first above written:

Appointment of Obligor to office.

WHEREAS the Obligor has lately been appointed to and now holds the office of —— in the —— (*society*):—

Condition of Bond.

NOW THE CONDITION of the above-written Bond is such that if the Obligor shall, from time to time and at all times hereafter, so long as he shall hold the said office of ——, duly and regularly account for and pay to the directors for the time being of the said society, or to any persons who may be appointed for this purpose, all money which shall come to his hands, either in the capacity of —— of the said society, or by any other means on account of the said society, and in every other respect fully and faithfully perform and discharge the duties and obligations which from time to time shall devolve on him in such capacity as aforesaid, Then the above-written Bond shall be void, otherwise the same shall remain in full force.

Signed, sealed, &c.

(*f*) All facts known by the obligee about the person appointed to the office should be communicated to the obligors: *London General Omnibus Co.* v. *Holloway* [1912], 2 K. B. 72; 81 L. J. K. B. 603.

CHAPTER III.

Deeds of Arrangements.

The law as to Deeds of Arrangement has been consolidated by the Deeds of Arrangement Act, 1914.

Instruments affected.

This Act applies to the following instruments, whether or not under seal, made by a debtor for the benefit of his creditors generally, or made by a debtor, who was insolvent, for the benefit of any three or more of his creditors, namely—

(a) An assignment of property;
(b) A deed or agreement for composition;
(c) A deed of inspectorship;
(d) A letter of licence;
(e) An agreement to carry on or wind up a debtor's business with a view to the payment of debts.

When an "act of bankruptcy."

A deed of arrangement is an act of bankruptcy, if it purports to convey all or most of a debtor's property to trustees for the benefit of creditors generally: Bkcy. Act, 1914, s. 1 (1) (*a*); but it will only remain so for three months from the date of its execution, s. 4 (1) (*c*), or within one month after the service of notice under the Deeds of Arrangement Act, 1914, s. 24; hence a trustee of such a deed should not part with the property assigned until either of the above periods have expired.

Meaning of "Deed of Arrangement."

In this chapter, a "deed of arrangement" means a private deed between a debtor and his creditors to prevent bankruptcy, and must be distinguished from a similar arrangement by a bankrupt made under the Bkcy. Act, 1914.

When rendered void.

A deed of arrangement will be void unless—

Registration.

(a) It is registered with the Registrar of Bills of Sale in the manner directed by the Deeds of Arrangement Act, 1914, within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed out of England, within seven clear days after the time at which it would, in the ordinary course of post, arrive in England, if posted within one week after the execution thereof: *ib.*, s. 2;

Stamp.

(b) It bears the *ad valorem* stamp imposed by this Act: *ib.*, s. 2;

Creditor's assent.

(c) Before twenty-one days after registration, or within such further period as the court may allow, the assent of a majority in number and value of the creditors is obtained.

Assent to deeds of arrangement.

This assent must be established by the creditor executing the deed of arrangement, or sending to the trustee his assent in writing attested by one witness: *ib.*, s. 3.

How far binding.

So long as it remains available as an act of bankruptcy, a private deed of arrangement binds only those creditors who have assented to it, but, apart from the assent of the majority necessary to render it valid, the assent of any particular creditor may be made in any way which is sufficient to imply acquiescence.

Withdrawal of assent.

A creditor may revoke his assent to the deed of arrangement at any time before execution thereof: *Re Jones* [1912], 3 K. B. 234; 81 L. J. K. B. 1178; but an unexplained delay in presenting a petition in bankruptcy does not necessarily imply acquiescence: *Re Beesley*, 109 L. T. 910.

Adjudication in bankruptcy.

Adjudication in bankruptcy avoids the assignment, and the debtor's property will vest in the trustee in bankruptcy, and be distributed by him in accordance with the law of bankruptcy.

Trustees to delay disposal of property.

Where a deed of arrangement has been superseded by adjudication the trustee of the deed may be treated by the trustee in bankruptcy either as an agent or as a trespasser. In either case he will be in an awkward position if he has parted with any of the property assigned to him.

For this reason he should not part with that property until he is protected by a notice under s. 24, or three months have elapsed from the date of execution of the deed.

Liability and remuneration of trustee.

If the trustee places the debtor in a position to dispose of the property assigned and the debtor takes advantage of it, the trustee will be liable to make good the loss on the debtor's bankruptcy: *Re Prigoshen* [1912], 2 K. B. 494.

If the trustee requires remuneration, it must be provided for by the deed.

Composition.

Sometimes the creditors are willing to accept a composition unaccompanied by a *cessio bonorum*; in such cases the composition is generally made payable by instalments, secured by a joint and several covenant of the debtor and a surety, or by joint and several promissory notes given by them.

DIVISION IV.

ARRANGEMENTS WITH CREDITORS.

No. I.

ASSIGNMENT *by a* DEBTOR *of all his pure* PERSONAL ESTATE *to* TRUSTEES *for the benefit of his* CREDITORS.

Parties.

THIS DEED OF ARRANGEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Debtor), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the 2nd part, and the several persons and firms mentioned in the Second Schedule hereto, creditors of the Debtor, who or whose attorneys or agents (*a*) on their behalf execute or otherwise accede to this deed, of the 3rd part: WHEREAS:—

Agreement for arrangement.

(1) It has been agreed between the Debtor and his creditors that such arrangement shall be made as is hereinafter contained:

Debtor has furnished statement of his affairs to Trustees.

(2) The Debtor has furnished a statement (*b*) of his affairs to the Trustees, and from such statement it appears that his property consists of the particulars mentioned in the First Schedule hereto:

Creditors in Second Schedule.

(3) The names of the creditors, and of the amounts owing or claimed to be owing to them respectively, are inserted or intended to be inserted in the Second Schedule hereto:

(*a*) This includes one member of a firm signing on behalf of the firm. "Person" includes a "corporation"; L. P. Act, 1925, s. 61.

Land.

(*b*) This deed must be registered under the Deeds of Arrangement Act, 1914, s. 2. Under the L. C. Act, 1925, ss. 8–9, a deed of arrangement affecting land must also be registered at the Land Registry in order to bind purchasers.

Accounts.

By the Deeds of Arrangement Act, 1914, s. 13, trustees of arrangement deeds are required to transmit accounts to the Board of Trade. For the rules under this section see Wms. Bkcy., 13th ed., 895. As the trustees act as trustees for sale there should (unless a trust corporation is acting) be at least two and not more than four trustees: L. P. Act, 1925, s. 27 (2); T. Act, 1925, s. 34.

Number of trustees.

The execution of a deed of arrangement by other creditors and the insertion of their names with the amount of their debts in a schedule after the deed is registered does not invalidate the registration: *Re Batten* (1889), 22 Q. B. D. 685; 58 L. J. Q. B. 333; and see *Maskelyne* v. *Smith* [1903], 1 K. B. 671; 72 L. J. K. B. 237.

Sworn statement.

A solicitor acting for any of the parties cannot administer an oath to the debtor: *Re Bagley* [1911], 1 K. B. 317; 80 L. J. K. B. 168.

The Act does not apply to arrangements made by limited companies: *Re Rileys* [1903], 2 Ch. 590; 72 L. J. Ch. 678. Every such deed must also be

NOW, in consideration of the release hereinafter contained, THIS DEED WITNESSETH as follows :—

Debtor assigns personal property to Trustees.

1. THE Debtor, As Beneficial Owner, hereby assigns unto the Trustees,

ALL the personal property of the Debtor mentioned in the first part of the First Schedule hereto :

TO HAVE AND RECEIVE the same unto the Trustees, Upon the trusts and subject to the powers and provisions hereinafter declared concerning the same.

Trust for sale and conversion, and to pay :

2. THE Trustees shall sell, call in, and convert into money the premises hereby assigned at such times and in such manner as they shall think fit, and shall, out of the money to arise thereby—

(1) costs and expenses of arrangement ;

(i) in the first place, pay and retain all costs, charges, and expenses of and incidental to the preparation and execution of this Deed and the negotiations preparatory thereto, and all costs, charges, and expenses of and incidental to the execution of the trusts and powers hereof ;

(2) preferential debts in full ;

(ii) in the next place, pay in full all those debts of the Debtor which are by statute (*c*) directed to be paid in priority to other debts in the distribution of the property of a bankrupt ;

(3) divide residue among creditors rateably ; and pay surplus (if any) to Debtor.

(iii) divide the residue of the said money among the parties hereto of the third part rateably according to the amount of their respective debts, in like manner as if the Debtor had been adjudged a bankrupt on the execution hereof, and so that all debts which would have been provable against the estate of the Debtor in bankruptcy shall be provable in like manner against his estate under this Deed ;

(iv) if the said money shall be more than sufficient to pay the said debts in full, the ultimate surplus shall be paid to the Debtor.

Power to postpone sale and conversion and to manage business in meantime.

3. THE Trustees may postpone the sale and conversion of any part of the property hereby assigned for so long as they shall think fit,(*d*) and may in the meantime carry on and manage the business of the Debtor, and may employ the Debtor in the management and winding up thereof, and may allow him any

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Stamps.

duly stamped with the proper inland revenue duty, and also with a stamp denoting a duty at the rate of one shilling for every £100 of the sworn value of the property passing, or (where no property passes) the amount of composition payable under the deed.

(*c*) As to preferential payment of debts, see Bkcy. Act, 1914, s. 33 ; Wms. Bkcy, 13th ed., 181, *et seq.*

(*d*) As to the liabilities of trustees under a deed of arrangement, see 54 Sol. J. 44.

reasonable remuneration for his trouble; And all money received by the Trustees in respect of the profits of the said business or otherwise from the trust property shall be held upon the trusts hereinbefore declared.

Trustees to have power to require evidence of alleged debts, and to compromise, &c.

4. (1) THE execution of this Deed by any person claiming to be a creditor of the Debtor, and the insertion in the Second Schedule hereto of the amount alleged or claimed to be owing to him, shall not preclude the Trustees from questioning the validity or amount of the alleged debt, or from requiring such evidence thereof as they may think fit:

(2) THE Trustees may compromise or submit to arbitration or otherwise settle any debt claimed to be due and owing from the Debtor, and any difference or dispute which may arise between them and any person whomsoever respecting the trust premises or any claim or demand thereon.

Debtor to furnish accounts to Trustees if required.

5. THE Debtor shall from time to time furnish to the Trustees such further statements and accounts of his property, and of his debts and engagements, and of all particulars relating thereto, together with such evidence in verification of such statements and accounts as they shall require.

Debtor to convey real and leasehold property (if any) to Trustees.

6. (1) IF it shall hereafter appear (*e*) that the Debtor has now any property (whether real or personal) to the value of £10 or upwards not included in the First Schedule hereto, all such property shall, at the request of the Trustees and at the cost of the trust property, be forthwith conveyed and assigned, or otherwise made over by the Debtor to the Trustees, to be held by them upon the trusts hereinbefore declared concerning the property hereby assigned, with such variations only as the Trustees, having regard to the nature of the property, may consider desirable, and in the meantime the Debtor shall stand possessed of such property, IN TRUST for the Trustees in fee simple or absolutely:

(2) IN addition to the powers conferred on trustees for sale the Trustees shall have in reference to the estate of the Debtor all the powers of a trustee in bankruptcy.

(*e*) Sometimes the deed purports to assign, not only the specified property, but also all other the debtor's estate and effects. But as such a general description might pass property more conveniently dealt with by a separate instrument, *e.g.*, real estate, leaseholds with onerous covenants (see *St. Thomas' Hospital* v. *Richardson* [1910], 1 K. B. 271; 79 L. J. K. B. 488), shares in companies, money owing on mortgages, &c., a covenant as above seems a more convenient plan.

Number of Trustees.

As the trustees will hold the land on trust for sale there must not be less than two individuals to act: L. P. Act, 1925, s. 27.

(2) In consideration of the release hereinafter contained the Debtor hereby irrevocably appoints the Trustees and each of them and the persons deriving title under them jointly and severally to be his attorneys or attorney for him and in his name or on his behalf, or otherwise to sign, seal and deliver all conveyances and other instruments which may in the opinion of the Trustees be required for getting in all such property and for giving legal effect to all dispositions made by the Trustees in exercise of any power hereby or by law conferred on them, as the Trustees may deem expedient.(*f*)

Release by creditors.

7. The parties hereto of the third part hereby release the Debtor from all debts, claims and demands whatever, subject nevertheless to the provisions hereinafter contained.(*g*)

Release not to prejudice securities or remedies against third persons, but creditor to be entitled to dividend on amount of debt after realising or giving credit for value of securities.

8. Nothing herein contained shall prejudice any right or remedy which any creditor may have against any person (*h*) other than the Debtor, nor prejudice or affect any mortgage, lien or security which any creditor may have on any property of the Debtor or of any other person; but a creditor holding any mortgage, lien or security on any property of the Debtor shall be entitled to receive a dividend in respect only of the amount of the debt owing to him after realising or giving credit for the value of such mortgage, lien or security in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy; and if the Trustees and the secured creditors shall be unable to agree as to the value of the security, the value thereof shall be referred to two arbitrators, one to be appointed by each party, and, in case of their disagreement, to an umpire to be appointed by the arbitrators before they proceed to business.

Trustees to have power

9. If any creditor, whose debts together amount to £——

Filing of powers.

(*f*) A power of attorney or the material parts of it must, when affecting land, be filed: L. P. Act, 1925, s. 125; see also Jud. Act, 1925, s. 219.

Bankruptcy.

(*g*) If the deed is avoided as an act of bankruptcy, and the debtor is made a bankrupt, this release is avoided also, and the executing creditors may prove in the bankruptcy: *Re Stephenson* (1888), 20 Q. B. D. 540; 57 L. J. Q. B. 451.

Effect of release on surety.

(*h*) A release given to the principal debtor discharges the surety also, unless the right to sue the latter is expressly reserved. In the case of such reservation, the surety, if made to pay, can proceed against the principal debtor to be indemnified, notwithstanding the release; or he may, if he pleases, prove for a dividend under the arrangement in the place of the creditor whom he has paid, in which case he will be bound by the release: *Re Whitehouse* (1888), 37 Ch. D. 683; 57 L. J. Ch. 161.

over and above the value of any securities held by him, shall refuse or decline to execute or accede to this Deed, then and in such case the Trustees may, if they think fit, declare, by writing under their hands, that this Deed shall be void, and thereupon the same shall be void accordingly, and the property shall be reassigned and restored to the Debtor. to avoid the deed if any creditor refuses to accede.

10. IF (*i*) any difficulty or question shall arise in the execution of the provisions hereof which the Trustees may wish to refer to the creditors, they may call a meeting of the creditors for that purpose, to be held at such time and place as the Trustees shall appoint, and any resolution passed at such meeting by a majority in value of the creditors present and voting thereat, in reference to the matter referred to them, shall bind all the other creditors. Disputes to be settled by creditors at a meeting.

11. (1) THE power of appointing new or additional trustees conferred by the Trustee Act, 1925, shall apply to this Deed. Power to appoint trustees.

[PROVIDED that whenever a vacancy shall occur in the trusteeship or an additional trustee is required, the person in whom the statutory power shall be vested (hereinafter called the Donee) shall call a meeting of the parties hereto of the third part, at such time and place as the Donee shall appoint, which meeting shall, by a majority in value of the creditors present and voting thereat, choose the trustees to supply the vacancy, or to act as an additional trustee, and the Donee shall appoint the persons so chosen:

(2) A statement in the deed by which the Donee appoints trustees to the effect that such trustees have been duly chosen at a meeting of creditors as aforesaid shall be conclusive evidence of the fact so stated in favour of any purchaser or other person deriving title for value to any part of the trust premises under this deed.(*j*)]

12. ANY meeting of creditors hereby authorised to be called shall be summoned by sending a notice thereof through the post to each creditor or his agent at his usual or last known place of address in England or Wales, such notice to be posted fourteen days at least before the day of meeting, and the provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to all such notices. How meetings to be called.

IN WITNESS, &c.

(*i*) Clauses 12, 13, 14, pp. 420–1 in the next Precedent, may be substituted for Clauses 10, 11, 12 in the above Precedent, if desired.

(*j*) The portion of this clause within brackets may be omitted where it is thought that the power may be safely left in the surviving trustees, &c., without a meeting of creditors.

THE FIRST SCHEDULE.

The First Part (property included in this assignment).

1. The stock-in-trade, book debts,(*k*) credits, chattels, and effects belonging or owing to the Debtor in connexion with his business of ——, carried on at ——, and the goodwill of the said business.

2. The furniture and household effects (*l*) in and about the messuage at ——, wherein the Debtor resides, except what is comprised in the second part of this Schedule.

(*Add any other particulars.*)

The Second Part (property excluded).

The wearing apparel of the Debtor and of the members of his family.

(*Add any other particulars.*)

THE SECOND SCHEDULE.

Name and Signature of Creditor.	Amount of Debt.	Seal.

No. II.

CONVEYANCE *and* ASSIGNMENT *by a* DEBTOR *of all his* REAL *and* PERSONAL ESTATE *to* TRUSTEES *for the* BENEFIT *of his* CREDITORS.(*m*) (*Legal Estate.*)

THIS DEED OF ARRANGEMENT is made, &c. (*Parties and Recitals as in last Precedent*):

Notices. (*k*) See *Burlinson* v. *Hall* (1884), 12 Q. B. D. 347; 53 L. J. Q. B. 222. Before suing a book debtor, express notice of this assignment should be given to him: L. P. Act, 1925, s. 136. If the property assigned includes life interests or reversions the requisite notices under *ib.*, s. 137 or 138, must be given in writing.

Registration. (*l*) This deed does not require registration as a bill of sale, see Bills of Sale Act, 1878, s. 4; see also *General Furnishing Co.* v. *Venn* (1863), 2 H. & C. 153; 32 L. J. Ex. 220.

(*m*) This deed must be registered under the Deeds of Arrangement Act, 1914, s. 2, and the L. C. Act, 1925, ss. 8 and 9.

There is no advantage in having a separate conveyance of the real estate, because such separate conveyance would have to be registered, and the other deed could not be kept off the title.

Land. If land is included there should be at least two trustees, being individuals, to give receipts: L. P. Act, 1925, s. 27.

NOW, in consideration of the release hereinafter contained, THIS DEED WITNESSETH as follows :—

Debtor conveys and assigns freehold and leasehold property to Trustees.

1. THE Debtor, As Beneficial Owner, hereby conveys and assigns unto the Trustees,

ALL AND SINGULAR the freehold (*n*) and leasehold properties described in the first part of the First Schedule hereto,

TO HOLD, as to the said freehold property, Unto the Trustees in fee simple,

AND as to the said leasehold property, Unto the Trustees for the residues of the respective terms granted by the respective Leases mentioned in the same part of that Schedule, at the rents and subject to the lessee's covenants and the conditions by and in the same Leases respectively reserved and contained ; And as to all the said property, Upon the trusts hereinafter declared.

Covenant by Debtor to assign leaseholds and transfer stocks, &c., to Trustees.

2. (i) THE Debtor hereby covenants with the Trustees that the Debtor will, at the request of the Trustees and at the cost of the trust estate [assign (*o*) the leasehold properties described in the second part of the First Schedule hereto unto the Trustees for the residues of the respective terms granted by the respective Leases mentioned in the same part of that Schedule at the rents and subject to the lessee's covenants and the conditions by and in the same Leases respectively reserved and contained, And also will, at the like request and cost], transfer or cause to be transferred the investments mentioned in the second [third] part of the First Schedule hereto into the names of the Trustees ; And will in the meantime stand possessed of the said [leasehold property,] investments and the [rents, profits,] and income thereof, IN TRUST for the Trustees, absolutely, to be held by them Upon the trusts hereinafter declared concerning the same.

(ii) THE Debtor hereby irrevocably appoints the Trustees and each of them and the persons deriving title under them jointly and severally to be his attorneys and attorney in his name and as his act and deed or otherwise, to sign, seal, and deliver any such assignment or transfer as aforesaid, or any

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Enfranchised land.

(*n*) If there are any enfranchised lands affected by manorial incidents the deed must be produced to the steward of the manor within six months for endorsement, and the fines, &c., paid. The parcels should except the lord's mineral and sporting rights and the habendum should refer to the manorial incidents.

(*o*) Where the lease contains onerous covenants, the debtor should covenant to assign it, instead of making an actual assignment.

disposition required for giving legal effect to the trust for sale, or any power hereby or by statute conferred.

Debtor assigns personal property to Trustees in trust to sell and convert.

3. THE Debtor, As Beneficial Owner, hereby assigns unto the Trustees,

ALL the property described in the third [fourth] part of the First Schedule hereto (except the property mentioned in the fourth [fifth] part of that Schedule),

TO HAVE AND RECEIVE the same unto the Trustees Upon the trusts hereinafter declared concerning the same.

Trust for sale, &c.

4. THE Trustees shall sell, call in, and convert into money the property comprised in the first, second, and third parts [*or*, first, second, third, and fourth parts] of the First Schedule hereto, at such times and in such manner as they shall think fit, and shall, out of the money to arise thereby (*as in last Precedent, clause* 2).

Power to postpone sale and conversion, and to manage property in meantime.

5. (1) THE Trustees may postpone the sale and conversion of all or any part of the trust premises for so long as they think fit, and may at their discretion lease, manage, and otherwise deal with any freehold, leasehold or other property remaining unsold in such manner as they may think fit, with liberty (in addition to the statutory powers conferred on trustees for sale) to raise money by way of mortgage (*p*) for the purpose of discharging any of the liabilities of the Debtor, and to expend money in repairs, insurance against fire, and other outgoings and expenses incidental to the management of the property, and may carry on and manage the business of the Debtor, and may employ the Debtor in or about the management and winding up of the same, and may pay to him any reasonable remuneration for so doing:

(2) ALL rents, profits, and other money received by the Trustees in respect of the property or business shall be held Upon the trusts hereinbefore declared.

6—11. (*Adapt Clauses* 4—9 *in last Precedent.*)

Meetings of creditors to be called on requisition of a certain number or at discretion of Trustees.

12. (1) THE Trustees (*q*) may, whenever they think fit, and they shall, if required so to do in writing by not less than one-fourth in value of the creditors, summon a general meeting of the creditors for the purpose of considering any matter connected with the estate of the Debtor or the execution of the trusts and powers hereof.

(*p*) As to the protection of mortgagees: T. Act, 1925, s. 17.

(*q*) As alternative clauses for 12, 13, 14, see Clauses 10, 11, 12 in last Precedent.

(2) EVERY such meeting shall be summoned by a notice in writing, specifying the day, place, hour, and object of the meeting, which notice shall be sent through the post to every creditor or his agent at his usual or last known place of abode in England or Wales, and shall be posted fourteen days at least before the day of meeting.

(3) THE provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to every such notice.

What majority necessary to pass a resolution.

13. ANY resolution passed at a meeting summoned as aforesaid by a majority in number representing one-half at least in value of the creditors present and voting thereat, shall bind all the other creditors; And in particular such majority may, by a resolution, remove a trustee from office for any reason which may appear to them sufficient, and may nominate any persons to be appointed trustees, either in addition to any acting trustees for the time being, or in the place of any trustees who may have died or shall be desirous of resigning office, or shall have been removed from office as aforesaid; and for the purposes of giving effect to any such resolution, the statutory power to appoint new trustees shall be vested in the chairman of the meeting and the provisions of the Trustee Act, 1925, shall apply accordingly.

Power to remove a trustee and to appoint additional and new trustees.

Resolution of meeting: how to be proved.

14. WHENEVER a resolution shall be passed at a meeting of creditors for the removal of a trustee or the appointment of a new or additional trustee, a copy of such resolution, purporting to be signed by the chairman of the meeting, shall be sufficient evidence that the meeting was duly convened and the resolution duly passed by the required majority of creditors, and no purchaser or other person deriving title to any property under any sale or disposition for value made by a trustee appointed pursuant to any such resolution shall be bound or concerned to see or inquire into the regularity or validity of such appointment.

IN WITNESS, &c.

THE FIRST SCHEDULE.

The First Part (*freeholds and leaseholds conveyed and assigned*).

The Second Part (*onerous leaseholds and stocks and shares in companies covenanted to be assigned*).

The Third Part (*other personal estate included in assignment*).

The Fourth Part (*property excluded*).

THE SECOND SCHEDULE.

(*Names of creditors and amounts of debts, &c., as in last Precedent.*)

No. III.

CONVEYANCE *by a* DEBTOR *of all his property to* TRUSTEES *for the benefit of his* CREDITORS *with a* COMMITTEE *of* INSPECTION.(*r*)

Parties.

THIS DEED OF ARRANGEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called "the Debtor"), of the 1st part, C. D., of, &c., and E. F. (hereinafter called "the Trustees"), of the 2nd part, G. C., of, &c., R. C., of, &c., and S. V., of, &c. (hereinafter called "the Committee"), of the 3rd part, and the several Persons, and Firms, whose names and addresses are set forth in the Schedule hereto, being respectively Creditors of the Debtor, and all other (if any) persons who are now Creditors of the Debtor, and shall assent hereto in writing or otherwise (all of which parties are hereinafter called "the Creditors" which expression where the context admits, includes the persons respectively deriving title under them) of the fourth part: WHEREAS:—

(1) The Debtor is indebted to the Creditors respectively in divers sums of money which the Debtor is unable to pay in full, and he has proposed to make such provision for the payment thereof as is hereinafter contained:

(2) The Creditors have agreed to accept such proposal and to enter into the covenants on their part hereinafter contained:

(3) The Committee have agreed to act as a Committee of Inspection:

NOW, in pursuance of the said agreement and for the consideration aforesaid, THIS DEED WITNESSETH as follows:—

Conveyance on trust for conversion.

1. THE Debtor, As Beneficial Owner, hereby conveys, assigns and appoints unto the Trustees (and as to real estate) in fee simple,

ALL AND SINGULAR the real and personal estate whatsoever and wheresoever of or to which the Debtor is seised, possessed or otherwise entitled in any manner whatsoever (except leasehold property held for years or for any less term and except land the title to which is registered under the Land Registration Act, 1925, and except all shares standing in the name of the

(*r*) Prints of this Precedent can be obtained from the Publishers. To be registered under the Deed of Arrangement Act, 1914, within seven days; if the deed relates to land it must also be registered under L. C. Act, 1925. Two trustees are required to give receipts.

Debtor which are not fully paid up or to the holding of which some liability is attached, and also except the Debtor's tools of trade (if any) and the necessary wearing apparel and bedding of the Debtor and his family),

AND ALSO (by way of conveyance and not of exception), all property, whether real or personal, which the Debtor now has any power by deed or writing (otherwise than by Will only) to appoint as he may think fit,

TO HOLD according to the nature and tenure thereof respectively as to real estate unto the Trustees in fee simple, and as to personal estate unto the Trustees absolutely UPON TRUST to call in, collect and receive such parts of the property as can be realised in that manner, and to sell and convert into money such parts thereof as shall not consist of money, either by public auction or private contract TOGETHER with full power for the Trustees, with the leave of the Committee, to bring, defend, compromise or abandon any action or other proceeding relating to the estate or any part thereof, and to give time for the payment of any debts owing to the Debtor, and to accept payment thereof by instalments, composition or otherwise and to abandon any debts which shall be considered bad: AND out of the money to be so realised—

(i) In the first place to pay the expenses of the collection, realisation and conversion into money of the said estate;

(ii) Secondly, to pay all costs, charges and expenses of or preliminary or incidental to the preparation, execution and registration of this Deed (including the convening and holding of any meeting of the Creditors held before the execution of this Deed, and the negotiations therefor and the investigation of the Debtor's affairs), and carrying of this Deed into effect, including the professional charges of the Trustees (to which they shall be entitled, in the same manner as if they were not Trustees and had been employed to perform the services rendered by them);

(iii) Thirdly, to pay such rates, taxes, wages and other claims or such part thereof respectively as would have been payable in priority to all other debts if a receiving order had on the date hereof been made against the Debtor and the Debtor had on that date been adjudged a bankrupt;

(iv) And, subject as aforesaid, to divide the residue of the said money amongst all the Creditors rateably in propor-

tion to the amounts of their respective debts in the same manner as if the estate of the Debtor had been administered in bankruptcy, and by such dividends and at such times as the Committee shall direct ;

(v) And if there shall be any surplus of the said money upon trust to pay such surplus to the Debtor.

Secured creditors.

2. PROVIDED that if any Creditor shall hold any mortgage, charge or lien on the property of the Debtor, or any part thereof, as a security for a debt owing by the Debtor, such Creditor shall (subject to the verification or determination thereof in case of dispute, in the manner hereinafter provided) be entitled to participate in the division of the estate of the Debtor to the extent of the balance only of such debt after deducting the value of such security.

Power of attorney.

3. THE Debtor hereby irrevocably appoints the Trustees and every other person who shall hereafter be duly appointed a Trustee hereunder, and each of them and their or his substitute, jointly and severally to be his attorneys in his name and on his behalf or otherwise to execute any deed or document, or to do any act which shall be necessary for effectuating the purposes of this Deed, and in particular for effecting any such assurance of property and shares as is hereinafter agreed to be made, and also to demand, sue for, recover and receive any debt or other thing in action owing or belonging to the Debtor.

Distribution of dividends.

4. (1) NOT less than twenty-one days nor more than two months before declaring any dividend the Trustees shall give notice of their intention so to do in the " London Gazette " and such other newspaper as shall be directed by the Committee, and such notice shall specify the time within which notice of any debt owing by the Debtor to any of the Creditors shall be given to the Trustees, which shall be not less than twenty-one days from the date of such notice.

(2) THE Trustees, upon the expiration of the time named in the said notice, shall be at liberty to distribute the assets of the Debtor, or any part thereof, amongst the persons entitled thereto, having regard only to the claims of which the Trustees shall then have had notice.

(3) THE Trustees shall not be liable for the assets or any part thereof so distributed to any person of whose claim the Trustees shall not have had notice, or of whose claim the amount or the particulars or value of the securities (if any) held in respect

thereof shall not have been duly verified or determined or whose claim shall in any particular be disputed, but any Creditor of whose claim the Trustees shall not have had notice, or of whose claim the amount or the particulars or value of the securities (if any) held in respect thereof shall not have been verified or determined, or whose claim shall in any particular be disputed, shall, on giving notice of his claim to the Trustees and on the same being duly verified or determined (in case of dispute as hereinafter provided), be entitled to be paid out of any assets for the time being in the hands of the Trustees the amount of any dividends which such Creditor shall have failed to receive, before such assets shall be applied in the payment of any future dividends, but such Creditor shall not be entitled to disturb the distribution of any dividend declared before the notice to the Trustees of such Creditor's claim or before the verification or determination thereof, in the manner hereinafter provided (as the case may be).

Valuation of securities.

5. IF there shall be any dispute as to the value of the security held by any Creditor, the same shall be determined by arbitration in the manner hereinafter provided, and such determination shall be final.

Verification of claims.

6. THE Trustees shall have power to require the amount of any debt or claim, and the particulars and value of any securities held by any of the Creditors, to be verified by statutory declaration or in such other manner as the Trustees shall require, or to admit such debt or claim and the particulars and value of any such securities, upon such information and vouchers (if any) being furnished and produced as the Trustees may require or can obtain for the satisfaction of the Trustees.

Exclusion of creditors.

7. IF any Creditor shall not within twenty-one days after notice in writing expressing the requirements of the Trustees as to the statement or verification of the debt or claim or of the particulars or value of the securities (if any) of such Creditor shall have been given to such Creditor or left at or posted to the last known place of abode, occupation or business of such Creditor, comply with the requirements of the Trustees, such Creditor shall (unless the Trustees shall otherwise determine as to the whole or any part of the debt or claim) be excluded from the benefit of the dividends declared after the expiration of such period of twenty-one days :

PROVIDED that if such Creditor shall, within the said period of twenty-one days, by notice in writing to the Trustees, require

and consent to any dispute with reference thereto being determined by arbitration, the rights of the Creditor and the Trustees respectively with respect to the matter in dispute shall be as shall be determined by such arbitration, notwithstanding that the said period of twenty-one days shall have expired before the dispute shall have been so determined.

General Meetings.

8. (1) THE Trustees shall have power, at the cost of the trust estate, from time to time, to summon general meetings of the Creditors for the purpose of ascertaining their wishes or otherwise, and it shall be the duty of the Trustees to summon meetings at such times as the Creditors by resolution may direct, or whenever requested in writing so to do by Creditors entitled to one-fourth in value of the assets, or by the Committee, and any such meeting shall be summoned by notices sent not less than three days before the day appointed for the meeting to the Creditors of whose debts the Trustees shall have had notice, and all resolutions passed by the majority in number and Creditors entitled to three-fourths in value of the assets present or represented at any such meeting shall be binding on the Creditors.

(2) THE notices summoning any such meeting shall be deemed to have been duly served if left at or sent by prepaid letter post addressed to the last known address of the person to be served therewith, and any resolution duly passed as aforesaid at any such meeting shall be valid if the said notices shall have been so left or sent, notwithstanding that some of the Creditors shall not have received such notice.

Accounts.

9. (1) ALL money to be received by the Trustees shall forthwith be paid to a separate trust account to be opened in the name of the Debtor's estate at the Trustees' bankers, or at such other bank as shall be directed by the Committee or by a resolution passed at a meeting of the Creditors.

(2) THE Trustees (besides sending to each of the Creditors such statements of the accounts and proceedings as are required by section fourteen of the Deeds of Arrangement Act, 1914) shall, at such times as the Committee shall require, furnish and transmit to the Committee a statement of account showing the receipts and payments and of any other matters necessary to show the position of the administration of the estate, and submit the accounts and vouchers to the Committee for audit.

10. THE Trustees may, with the consent of the Committee, carry on the business of the Debtor so far as may be necessary for the beneficial winding up of the estate and make such allowances to the Debtor for his services in the winding up of the estate, and with the like consent postpone the sale of the property of the Debtor, or any part thereof, for such time as may be deemed expedient. Winding up of business.

11. (1) THE Trustees, or either of them, may be removed from office and a new Trustee or new Trustees appointed in their or his place, pursuant to a resolution passed by a majority in number and three-fourths in value of the Creditors present or represented at any general meeting called in the manner aforesaid by the Committee. Appointment of new trustees.

(2) THE statutory power of appointing a new Trustee or new Trustees shall be vested in and exercisable by the members of the Committee pursuant to any such resolution, but a purchaser or other person dealing with the Trustees for money's worth shall not be concerned to see that any deed of appointment is made in accordance with a resolution.

12. IF any member of the Committee shall die or go to reside abroad or desire to be discharged or become unfit or incapable of acting, it shall be lawful for a majority in number and three-fourths in value of the Creditors present or represented at a meeting to be summoned for that purpose to appoint a Creditor or Creditors, or some other eligible person or persons, to be a member or members of the Committee in the place of such member of the Committee so dying or going to reside abroad or desirous of being discharged or becoming unfit or incapable of acting as aforesaid, and the person or persons so appointed as aforesaid may exercise the powers hereby conferred as fully and effectually as if he or they had been hereby constituted a member or members of the Committee, and on any such appointment the number of such Committee may be increased or reduced. Appointment of new members of committee.

13. THE act, decision or determination of a majority of the Committee upon or with respect to any question, matter or thing falling to be decided, determined or done by them under this deed, shall be as valid as that of the whole Committee and binding and conclusive upon all parties claiming or entitled hereunder. Decision of committee.

14. THE Debtor hereby covenants with the Trustees that the Debtor will make a full and true discovery to the Trustees of all the estate and effects belonging to or capable of being Discovery of assets.

appointed to the Creditors' use by the Debtor, and of the names and addresses of all the Creditors of the Debtor and the amounts of their respective debts, and if required by the Trustees, verify the same by statutory declaration or otherwise, and will give such further inventory of his property and particulars of his Creditors and Debtors and of the debts owing to and from them respectively and submit to such examination as to his property or his Creditors and attend such meetings of his Creditors or the Committee, and wait at such times on the Trustees, and generally do all such acts and things in relation to his property and the distribution of the proceeds thereof amongst his Creditors as may be reasonably required by the Trustees, and will aid to the utmost of his power the realisation of his property and the distribution of the proceeds thereof amongst his Creditors.

Declaration of trust and covenant to convey.

15. (1) THE Debtor shall stand possessed of all leasehold property, registered land, shares and other interests belonging to him and hereinbefore expressed to be excepted from the foregoing conveyance (but not including the tools, apparel and bedding aforesaid) IN TRUST for the Trustees absolutely or in fee simple according to the nature of the premises, and to deal with and dispose of the same and the income thereof in such manner as the Trustees shall direct.

(2) THE Debtor hereby covenants with the Trustees to execute a transfer of all registered land belonging to the Debtor at the cost of the trust estate to the Trustees, and the Trustees to be registered as proprietors thereof as and when the Trustees shall so require, and also (if so required) to transfer to the Trustees, or as they may direct, any other property of the Debtor not included in the foregoing conveyance.

(3) THE Trustees shall have the same powers of disposition over and other powers with respect to the said excepted property shares and interests as are hereby conferred on the Trustees with respect to the real and personal estate hereinbefore conveyed to the Trustees.

Powers of Trustees.

16. IN addition to all the powers hereinbefore conferred or which are by law conferred on trustees for sale, the Trustees shall have all the like powers and discretions as are given to the trustee of a bankrupt's estate by the Bankruptcy Act, 1914, or any statutory modification thereof, and shall, with the permission or consent of the Committee, have all the like powers and discretions as are by the same Act given to or to be exercisable

by the trustee of a bankrupt's estate with the permission of the Committee of Inspection appointed under that Act.

Release of Debtor.

17. (1) In consideration of the premises, the Creditors do and each of them doth hereby respectively release the Debtor from all debts, claims, and demands whatsoever which the Creditors, or any of them, respectively, now have or has or but for this release might hereafter have against the Debtor for or in respect of any debt, contract, transaction, matter or thing prior to the date hereof :

(2) Provided that if the title of the Trustees to the estate and effects hereinbefore assured or agreed to be held by the Debtor in trust, or any part thereof, shall fail by reason of the Debtor's bankruptcy, or by reason of the conveyance, assignment, appointment, or trust thereof hereinbefore contained being or becoming void, then the release hereinbefore contained shall thereupon become void.

(3) The release to the Debtor hereinbefore contained shall not prevent any of the Creditors from suing any other persons who may have become bound as sureties for the Debtor, or who are in any manner liable for the payment of any debts of the Debtor, but the Creditors and each of them shall have the same remedies against any such sureties or other persons as the Creditors might have had if this deed had not been made.

Arbitration.

18. If any dispute or difference shall arise between the Trustees and the Creditors, or any or either of them, as to any matter or thing which it is hereby provided shall or may be determined by arbitration, or touching any clause, matter, or thing whatsoever herein contained, or the operation or construction thereof, or any matter or thing in any way connected with this deed, or the rights, duties or liabilities of the Trustees or the Creditors or any or either of them under or in connexion with this deed, then and in every such case the dispute or difference shall be referred to two arbitrators, one to be appointed by each party in difference, and in case of their disagreement then to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them, and this deed shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1889.

Definitions.

19. The expressions "the Trustees" and "the Committee," respectively, include the Trustees and the Committee of Inspection, respectively, for the time being under this deed.

In witness, &c.

THE SCHEDULE.

Signature of Creditor.	Seal.	Address and Business.	Amount of Debt. £	s.	d.	Date of Execution.	Signed, Sealed and Delivered in the presence of

No. IV.

DEED OF COVENANT *by* DEBTOR *and two* SURETIES *to pay a* COMPOSITION *of* TEN SHILLINGS *in the* POUND *to a* TRUSTEE *for the* CREDITORS, *and* RELEASE *of* DEBTOR.(*s*)

Parties.

THIS COMPOSITION DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Debtor), of the 1st part, C. D., of, &c., and E. F., of, &c. (hereinafter called the Sureties), of the 2nd part, G. H., of, &c. (hereinafter called the Trustee), of the 3rd part, and the several Persons and Firms mentioned in the Schedule hereto, creditors of the Debtor, who or whose attorneys or agents on their behalf execute or otherwise accede to this deed, of the 4th part: WHEREAS:—

Debts.

(1) The Debtor is indebted to the parties hereto of the fourth part in the sums set opposite to their names in the Schedule hereto:

Agreement for composition.

(2) It has been agreed between the Debtor and his creditors that the creditors shall accept a composition of ten shillings in the pound on their respective debts, to be paid by instalments, and to be secured by the joint and several covenants of the Debtor and the Sureties, and that the Trustee shall be the trustee for receiving and distributing the said composition:

NOW, in consideration of the release hereinafter contained, THIS DEED WITNESSETH as follows:—

Covenants by Debtor and Sureties to pay composition.

1. THE Debtor and the Sureties hereby jointly and severally covenant with the Trustee to pay to him, by three equal instalments, on the —— day of ——, the —— day of ——, and the —— day of ——, a sum of money sufficient to provide a composition of ten shillings in the pound on all the debts owing from

(*s*) If the composition is made payable through a trustee, a rateable division among the creditors without any preference or priority is secured.

the Debtor to his creditors (subject as regards secured debts to the provision relating thereto hereinafter contained), to be applied by the Trustee in the payment of such composition accordingly; And also to pay to the Trustee on demand a further sum of money sufficient to meet all costs and expenses incurred by the Trustee in or about or in connexion with this arrangement to be applied by the Trustee in payment of such costs and expenses accordingly.

Release of Debtor by his creditors.

2. In consideration of the foregoing covenants the parties hereto of the fourth part hereby release the Debtor from all debts, claims, and demands whatsoever, subject to the provisions herein contained.

Provisions of this deed not to prejudice any mortgage or other security of creditors.

3. Nothing herein contained shall prejudice any right or remedy which any creditor may have against any person other than the Debtor, nor prejudice or affect any mortgage, lien, or security which any creditor may have on any property or effects of the Debtor, or of any other person; but a creditor holding any mortgage, lien, or security on any property of the Debtor shall be entitled to receive the composition hereby provided in respect only of the amount of the debt owing to him after realising or giving credit for the value of such mortgage, lien, or security, in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy.

In witness, &c.

The Schedule.

(*Names of creditors and amounts of their debts, &c., as in Second Schedule to Prec. I, p.* 418.)

No. V.

DEED *of* Covenant *by a* Debtor *and his* Surety *to pay a* Composition *to* Creditors *without the intervention of a* Trustee.

Parties.

THIS COMPOSITION DEED is made, &c., Between A. B., of, &c. (hereinafter called the Debtor), of the 1st part, C. D., of, &c. (hereinafter called the Surety), of the 2nd part, and the several Persons and Firms mentioned in the Schedule hereto, being creditors of the Debtor, who or whose attorneys or agents execute or otherwise accede to this deed (hereinafter called the Creditors), of the 3rd part: Whereas:—

Debts.

(1) The Debtor is indebted to the Creditors in the sums set opposite to their names in the Schedule hereto:

Agreement for composition.

(2) It has been agreed that the Creditors shall accept a composition of ten shillings in the pound, payable by two equal instalments, and to be secured by the joint and several covenants of the Debtor and the Surety in manner hereinafter appearing :

NOW, in consideration of the Release hereinafter contained, THIS DEED WITNESSETH as follows :—

Debtor and Surety covenant to pay to Creditors composition [or to deliver joint and several promissory notes for composition].

1. THE Debtor and the Surety hereby jointly and severally covenant with the Creditors and with each of them to pay to them respectively a sum equal to five shillings in the pound on their respective debts on the —— day of —— next, and a further sum of money equal to five shillings in the pound on their respective debts on the —— day of —— next [*or*, to deliver to them respectively the joint and several promissory notes of the Debtor and the Surety for the payment to each creditor of a sum of money equal to five shillings in the pound on the debt owing to that creditor, on the —— day of —— next, and of a further sum of money equal to five shillings in the pound on the same debt on the —— day of —— next].

2 and 3. (*As in last Precedent.*)

IN WITNESS, &c.

THE SCHEDULE (*as in Second Schedule to Prec. I, p.* 418).

No. VI.

RELEASE *by* CREDITORS *on receiving* PROMISSORY NOTES *for a* COMPOSITION *on their* DEBTS *from the* DEBTOR *and a* SURETY.

Parties.

THIS RELEASE is made, &c., BETWEEN the several Persons and Firms whose hands and seals are hereunto subscribed or affixed (*t*) (hereinafter called the Creditors), being creditors of A. B., of, &c. (hereinafter called the Debtor), of the one part, and the Debtor of the other part : WHEREAS :—

Agreement for composition.

(1) At a meeting lately held of the Creditors it was agreed that the Creditors should accept a composition of ten shillings in the pound on their respective debts, payable by two equal instalments on the —— day of ——, and the —— day of ——,

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(*t*) In the case of an individual, sealing alone is not sufficient ; L. P. Act, 1925, s. 73. The reference to " persons " includes " corporations " : *ib.*, s. 61.

to be secured by the joint and several promissory notes of the Debtor, and of C. D., of, &c., as his surety; And it was also agreed that as regards the debt of any creditor secured by any mortgage or charge upon any property of the Debtor the security should be valued and such creditor should be entitled to the composition in respect only of the balance of the debt over and above the value of the security:

Creditors named in Schedule.

(2) The names of the Creditors, the amounts of their respective debts, and, in the case of secured debts, the amount at which the securities for the same have been valued, are respectively mentioned in the Schedule hereto:

That promissory notes of Debtor and Surety have been given to all the Creditors.

(3) Pursuant to the aforesaid agreement, the Debtor and the said C. D. have delivered to the Creditors respectively joint and several promissory notes for the payment to them, on the —— day of —— next of sums of money equal to five shillings in the pound, and on the —— day of —— next of sums of money equal to five shillings more in the pound on their respective debts, or, in the case of secured debts, on the balance of those debts respectively after deducting the value of the securities for the same, as the Creditors hereby respectively acknowledge:

Release by Creditors.

NOW THIS DEED WITNESSETH that, in consideration of the delivery to them of the said promissory notes, the Creditors and each of them hereby respectively release the Debtor from all debts owing to and all claims and demands whatsoever by the Creditors or any of them:

PROVIDED that—

Release not to affect rights against sureties, &c.

(1) THIS release shall not prejudice any right or remedy which any Creditor may have against any person (other than the Debtor) in respect of any debt hereby expressed to be released:

(2) ANY Creditor having a mortgage or charge on any property of the Debtor shall be entitled to enforce the same for the amount stated to be the value thereof in the third column of the Schedule hereto and no more.

IN WITNESS, &c.

THE SCHEDULE.

Name and Signature of Creditor.	Amount of Debt.	Value of Security, if any.	Seal.

No. VII.

DEED *of* COVENANT *by a* DEBTOR *and his* SURETY *to secure a* COMPOSITION *of* TEN SHILLINGS *in the* POUND *by* INSTALMENTS *pursuant to Section* 16 *of the* BANKRUPTCY ACT, 1914.(*u*)

Parties.

THIS COMPOSITION DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Debtor), of the 1st part, C. D., of, &c. (hereinafter called the Surety), of the 2nd part, and E. F., of, &c. (hereinafter called the Trustee), of the 3rd part: WHEREAS :—

Bankruptcy petition and order appointing receiver.

(1) A bankruptcy petition against the Debtor was lately presented to the High Court of Justice [or the county court of ——], and by an Order of the said court, made upon such petition, on the —— day of ——, 19—, the official receiver of the court was constituted receiver of the estate of the Debtor :

That a composition has been accepted and approved by Court, to be guaranteed by a surety.

(2) A composition in satisfaction of the debts owing from the Debtor on the terms mentioned in the Schedule hereto has been duly accepted and approved by the creditors, and has been sanctioned by the said court :

(3) It was one of the terms of the composition that the payment thereof should be guaranteed by the Surety, and that the Trustee should be the trustee to receive and distribute the same :

Joint and several covenants by Debtor and Surety with trustee to pay composition.

NOW THIS DEED WITNESSETH that, in consideration of the premises, the Debtor and the Surety hereby jointly and severally covenant with the Trustee (as such trustee as aforesaid), that the Debtor and Surety, or one of them, will duly pay all money from time to time payable by the Debtor according to the terms of the composition mentioned in the Schedule hereto as and when the same respectively shall become payable.

IN WITNESS, &c.

Compositions under Bankruptcy Act.

(*u*) This section authorises a majority in number representing three-fourths in value of all the creditors to accept at a meeting a proposal for a composition or a scheme of arrangement of the debtor's affairs, and the composition or scheme, when approved by the Court, is binding on all the creditors; see *Re E. A. B.* [1902], 1 K. B. 457; 71 L. J. K. B. 356; *Re Pilling* [1903], 2 K. B. 50; 72 L. J. K. B. 392; also *Re Keet* [1905], 2 K. B. 666; 74 L. J. K. B. 694.

In the above Precedent it is supposed that the creditors are willing to accept the personal security of the debtor and a surety without a *cessio bonorum*. If there had been no surety, the resolution of the creditors embodying the terms of the composition, and the order of the Court approving it, would have been sufficient, but a separate instrument is necessary to bind the surety: *Ex p. Mirabita* (1875), L. R. 20 Eq. 772; 44 L. J. Bk. 119.

THE SCHEDULE.

Terms of Composition.

1. THE Debtor is to pay in full and in priority to all others those debts which are by statute directed to be so paid in the distribution of the property of a bankrupt.(*v*) — Preferential debts to be paid first.

2. The Debtor is to pay a composition of ten shillings in the pound on all his debts (other than such preferential debts as aforesaid) in satisfaction of such debts, by three equal instalments at the times following (*state the days on which the instalments are to be paid*). — A composition of 10*s.* in the £ to be paid on other debts by instalments.

3. The Debtor is to pay all the costs, charges, and expenses incurred in and about the proceedings in bankruptcy, including the costs of and incident to this composition. — Costs to be paid by Debtor.

4. All debts provable in bankruptcy shall be deemed debts for the purpose of this composition, and the composition shall be payable in respect of such amount as would have been so provable. — What shall be deemed debts.

5. Nothing herein contained shall prejudice any right or remedy which any creditor may have against any other person than the Debtor, nor prejudice or affect any mortgage, lien, or security which any creditor may have on any property or effects of the Debtor, or of any other person; but a creditor holding any such mortgage, lien or security shall be entitled to receive the said composition in respect only of the amount of the debts owing to him after realising or giving credit for the value of such mortgage, lien or security, in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy. — Provision as to secured creditors.

6. The composition is to be guaranteed by the Surety. — Surety.

7. The Trustee shall be the trustee to receive and distribute the composition. — Trustee.

(*v*) As to preferential payments, see Bkcy. Act, 1914, s. 33; Wms. Bkcy., 13th ed., 181, *et seq.*

DIVISION V.

POWERS OF ATTORNEY.

No. I.

GENERAL POWER *of* ATTORNEY.(*a*)

THIS POWER OF ATTORNEY is made this —— day of——, 19—, by me, A. B., of, &c., being about to leave England, and to reside abroad for some time, exceeding one month :—

Definition of a power of attorney and its liability to revocation.

(*a*) A power of attorney is an authority given in due form of law by one person to another to act for him. By common law, a power of attorney is revocable by the grantor at any time unless given for valuable consideration: *Walsh* v. *Whitcomb*, 2 Esp. Ca. 565; *Smart* v. *Sandars* (1847), 5 C. B. 916; 17 L. J. C. P. 258; and it determines on his death: *Watson* v. *King* (1815), 4 Camp. 272; *Wallace* v. *Cook*, 5 Esp. 117; *Re Williams* [1917], 1 Ch. at p. 7. The law in this respect has been modified in favour of purchasers, trustees, and others by the following statutory provisions.

The L.P. Act, 1925.

Under the L. P. Act, 1925, s. 124, a donee acting in good faith in pursuance of a power of attorney is not liable for so acting, though unknown to the donee, the principal has revoked the power, or has died or become subject to disability or a bankrupt. Under sub-s. (2) a statutory declaration by the donee that he has not received notice of the revocation, if made immediately before or within three months after the payment or act, is conclusive evidence of the non-revocation. An officer of a corporate donee may make the declaration. Where representation is granted to an attorney, the section applies (see, *e.g.*, Jud. Act, 1925, s. 164, but at present no rules have been made enabling representation to be granted to an attorney); it also applies where the power is implied by statute: *e.g.*, L. P. Act, 1925, ss. 7, 8, 88, 89.

Irrevocable powers.

Under the L. P. Act, 1925, s. 126, acts done under a power of attorney given *for valuable consideration*, and in the instrument creating the power expressed to be irrevocable, are valid in favour of purchasers, notwithstanding the death, disability, bankruptcy or any act of the donor of the power, and notwithstanding that the purchaser or the donee of the power has notice of such death, &c. Such a power is as effectual as a conveyance unless the attorney dies without exercising it. Under *ib.*, s. 127, acts done under any power of attorney, *whether given for valuable consideration or not*, and in the instrument creating the power *expressed to be irrevocable for a specified time not exceeding one year* from the date thereof, are valid in favour of purchasers, and the power is irrevocable during that fixed time, notwithstanding the death, disability, bankruptcy or any act of the donor of the power, and notwithstanding that the purchaser or the donee of the power has notice of such death, &c.

An irrevocable power can be given to a purchaser and the person deriving title under him: *ib.*, s. 128.

1. I HEREBY appoint C.D., of, &c., and E. F., of, &c., and each of them, jointly and severally, to be my Attorneys or Attorney for the purposes hereinafter mentioned,(*b*) (that is to say) : Appointment of attorney.

(1) To receive the rents and profits of and manage all the houses, farms, lands and property of whatever tenure and of any interest therein, of or to which I now am or at any time hereafter shall or may become entitled for any estate or interest whatsoever, with liberty in the course of such management to let or demise the property, or any part thereof, either from year to year or for any term or number of years or for any To manage lands.

An irrevocable power of attorney to sell land and give receipts for the purchase money is not avoided by the donor of the power subsequently becoming an alien enemy : *Tingley* v. *Muller* [1917], 2 Ch. 144 ; 86 L. J. Ch. 625. Alien enemy.

A married woman can grant a valid power of attorney : *ib.*, s. 129. Married women.

Under the Trustee Act, 1925, s. 29, a trustee or personal representative, acting or paying money in good faith under a power of attorney, is not liable for such act or payment if the power has been revoked unknown to him by the disability, death or some act of the donor of the power. Under s. 25 a trustee, personal representative or tenant for life, intending to remain out of the United Kingdom for more than one month, may delegate his powers to any person, not being the only other individual trustee, but at present the power has to be filed within ten days at the Central Office, hence should be executed before the donor leaves the country. The Trustee Act, 1925.

Formerly an attorney was obliged in all cases to execute his power in the name of the principal ; this is still required where a legal estate is being conveyed or created on behalf of an estate owner : L. P. Act, 1925, ss. 7 (4), 8 (1), though a mortgagee may, and generally will, on a sale, convey in his own name : *ib.*, ss. 88–89. In other cases an attorney may execute any instrument in and with his own name, signature, and seal : L. P. Act, 1925, s. 123. Form of execution by attorney.

An individual acting under a power given by a corporation may execute a conveyance by signing the name of the corporation in the presence of a witness, and may affix his own seal to the deed : *ib.*, s. 74 (3). Similarly a corporation aggregate acting under a power given by another corporation or person can appoint an officer to execute a deed or other instrument in the name of the donor of the power : *ib.*, s. 73 (4). Powers given by or to corporations.

Generally, as to powers of attorney, see 1 Wolst. & Cherry, 11th ed., 341–347.

For stamps on a power of attorney, see Alpe, 18th ed., 176, *et seq* ; Highmore, 4th ed., 215–219.

Instruments containing powers of attorney may be filed in the Central Office, and office copies of instruments so deposited are sufficient evidence of their contents : Jud. Act, 1925, s. 219 ; those relating to land must be filed unless relating only to one transaction and handed over to a purchaser : L. P. Act, 1925, s. 125 ; in the case of registered land, the power should be filed at the Land Registry : *ib.* Powers of attorney to be filed in Central Office or Land Registry when affecting land.

As to execution by joint attorneys, see 54 Sol. J. 148.

(*b*) The power should, of course, be adapted to the actual property of the grantor, and to the extent of the authority which he wishes to entrust to his attorney. The above power is more comprehensive than would generally be required. For more limited powers, see next Precedent.

less period than a year, at such rents, and either with or without any fine or premium, and subject to such covenants and conditions as the said Attorneys or Attorney shall think fit; and with liberty also to accept surrenders of leases or tenancies, to make allowances to and arrangements with lessees, tenants, and others, to cut timber and other trees, whether for repairs, sale, or otherwise, to repair and rebuild houses or other buildings, and to insure the same against damage by fire, tempest or otherwise, to repair fences, to drain or otherwise improve the property or any part thereof, to appoint and employ bailiffs, game-keepers, agents, servants and others to assist in the management of the property, and to remove them and appoint others in their place, and to pay and allow to the persons to be so employed as aforesaid such salaries, wages or other remuneration as the said Attorneys or Attorney shall think fit: And with power also to give effectual receipts and discharges for the rents, profits and income of the property, and on non-payment of any rent or the breach of any covenant, agreement, or condition which ought to be observed or performed by any lessee or tenant, to take such proceedings by distress, action, or otherwise for recovering such rent or in respect of such breach as the said Attorneys or Attorney shall think fit; And generally to do all such acts or things in or about the management of the property as the said Attorneys or Attorney might do if they or he were or was the absolute owners or owner thereof; Also to use and take all lawful ways and means for recovering any houses, lands or property belonging or supposed to belong to me:

To exercise fiduciary powers.

(2) To exercise all powers and trusts conferred on me by statute or by any instrument, whether as tenant for life, statutory owner, trustee, personal representative or otherwise, but so that in all cases involving the exercise of any discretion the said Attorneys or Attorney shall (save as hereinafter provided) before exercising the power or trust, communicate with me by cablegram or otherwise to obtain instructions, and may act on any reply cablegram appearing to be sent by me, but no purchaser, lessee, mortgagee or other person dealing in good faith for money or money's worth shall be concerned to see that I have been communicated with or as to any instructions given by me: PROVIDED that if this power shall be filed at the Central Office within ten days after the execution hereof with a statutory declaration by me in accordance with section twenty-five of

the Trustee Act, 1925, and in other respects complies with that section, it shall not be necessary to communicate with or take instructions from me in regard to the matters aforesaid:

To recover money, &c.

(3) To ask, demand, sue for, recover and receive all sums of money, goods, effects and things (whether real or personal) now or hereafter owing, or payable, or belonging to me by virtue of any security, or upon any balance of account or otherwise howsoever, and to give, sign and execute receipts, releases and other discharges for any property or thing in action whatsoever:

To settle and compromise, &c.

(4) To settle, adjust, compound, submit to arbitration, and compromise all proceedings, accounts, claims and demands whatsoever, which now are or hereafter shall be depending between myself and any persons whomsoever, in such manner as the said Attorneys or Attorney shall think fit:

To deal with real or personal property.

(5) To dispose of (whether by way of sale, mortgage, lease or otherwise) or deal with any real or personal property (whether in possession or reversion) now or hereafter belonging to me, or which I have or shall have power to dispose of under any general power or as a mortgagee or otherwise,(*c*) and in particular—

(i) To sell, either by public auction or private contract, and subject to any conditions as to title or otherwise, with power to buy in or to rescind any contract for sale and to re-sell;

(ii) To raise money by way of mortgage for any purpose and in any manner, and so that no mortgagee shall be concerned to see whether the money is wanted or whether more than is wanted is raised or as to the application thereof;

(iii) To do all things necessary for effecting any extinguishment of manorial incidents or exchange, and to give or receive money by way of equality;

(iv) To grant leases or tenancy agreements for any term or purpose, with or without an option to purchase or rights of renewal;

(v) To give or accept any interest in real or personal estate as the consideration for any transaction.

To exercise statutory powers.

(6) Without prejudice to the generality of the foregoing powers to exercise, in reference to my real estate and chattels real, capital money and investments, all the powers conferred by

(*c*) See *Re Dowson and Jenkins* [1904], 2 Ch. 219; 73 L. J. Ch. 684.

the Settled Land Act, 1925, on a tenant for life in possession of land or on the trustees of a settlement : (*d*)

To take and defend actions, &c.

(7) To appear for me in any court in any action or other proceeding which may be instituted against me, and to defend the same or suffer judgment to go against me, and to commence and prosecute any action or proceeding on my behalf in any court in any matter as the said Attorneys or Attorney shall be advised or think proper :

To pay costs and expenses, &c.

(8) To apply any money which may come to the hands of the said Attorneys or Attorney under this Deed in payment of all costs and expenses incurred by them or him in or about the execution of the powers herein contained or to raise the same by way of mortgage or otherwise :

To deposit money in bank, &c.

(9) To deposit any money not required for costs and expenses as aforesaid at any bank, either in the names or name of the said Attorneys or Attorney or in my name, and to withdraw the same from time to time and to open or close any current account and to draw and sign cheques :

To invest.

(10) To invest any money, either in the names or name or under the control of the said Attorneys or Attorney or in my name, in any investments (whether being investments authorised by law for the investment of trust money or not) or in the purchase or on the security of any property real or personal, or any interest therein which they or he may think proper, and to vary the investments from time to time :

To execute deeds, &c.

(11) To execute and do in my name or otherwise all such deeds, covenants, agreements and things as the said Attorneys or Attorney may think proper for the purpose of giving effect to the powers hereby conferred :

PROVIDED that where, under the Law of Property Act, 1925, sections seven and eight, or any other statutory provision, a disposition has to be made in the name of an estate owner the same shall be made in my name or in the name of the estate owner for the time being :

Generally to manage all affairs.

(12) Generally to manage all my concerns and affairs of every description at their absolute discretion, and as fully and effectually as I could do if I were present and acting in my proper

(*d*) Independently of the T. Act, 1925, s. 25, or an express power, a tenant for life could only delegate ministerial powers, and would have to be consulted when any matter involving a discretion arose. Here, however, the power is supposed to be given by an absolute owner, hence he can confer on his attorneys powers similar to those given by the Settled Land Act.

person and without being liable to account for any act or default done or committed in good faith.

Powers for Attorneys to appoint substitutes, and to remove them at pleasure.

2. (1) EACH of the said Attorneys may act in the several powers and authorities hereby conferred separately and apart from the other of them :

(2) The said Attorneys and each of them may from time to time appoint one or more substitute or substitutes to do, execute, and perform all or any such matters and things as aforesaid ; and may at pleasure remove the same substitute or substitutes, and appoint another or others in his or their place or places.

Agreement to confirm.

3. ALL and whatsoever the said Attorneys, or either of them or their or his substitute or substitutes, shall do or cause to be done in or about the premises, I hereby covenant with my said Attorneys to allow, ratify and confirm.

Irrevocable.

4. THIS power shall be irrevocable for one year from the date hereof:(*e*)

PROVIDED that so far only as this power shall operate under section twenty-five of the Trustee Act, 1925, it shall not come into force unless and until I leave the United Kingdom, and shall be revoked by my return.

IN WITNESS, &c.

No. II.

POWER *of* ATTORNEY *for* PARTICULAR PURPOSES.

THIS POWER OF ATTORNEY is made this —— day of ——, 19 —, by me, A. B., of, &c. I hereby appoint C. D., of, &c., to be my Attorney [*or*, C. D., of, &c., and E. F., of, &c., and each of them, jointly and severally, to be my Attorneys or Attorney] for me and in my name and on my behalf or otherwise. (*Add such one or more of the following clauses or any of the clauses in the last Precedent as may be required.*)

To receive rents, make arrangements with tenants, and take proceedings.

1. To ask, demand, sue for, recover and receive of and from all tenants and other persons who ought to pay the same, all rents and sums of money which are now, or hereafter shall become due or payable from or in respect of all or any of my houses, lands, and property situated in the Parish of ——, in the County of ——, short particulars of which are contained in the Schedule hereto, and upon receipt thereof to give good

(*e*) This must not exceed one year: L. P. Act, 1925, s. 127.

and sufficient receipts and discharges for the same; And also, if the said Attorney [Attorneys or Attorney] shall think fit, to make abatements and allowances of rent to any of the tenants of the property, and to allow deductions for ground rents, land tax, repairs, and other matters, and to settle and adjust all accounts, claims, and demands in relation thereto, and also, upon non-payment of the said rents or any of them, or other money, or any part or parts thereof, to take such proceedings by distress, action, or otherwise, to recover the same as the said Attorney [Attorneys or Attorney] shall think fit.

To sell and convey lands and to manage until sale, with usual powers.

2. To sell at such time or times as the said Attorney [Attorneys or Attorney] shall think fit, all or any of my houses, lands, and property situated in the Parish of ——, in the County of ——, short particulars whereof are contained in the Schedule hereto, and also any other real estate and chattels real which may belong to me during the continuance of this power, either together or in lots, and either by public auction or private contract, and either with or without special conditions as to title or otherwise, with liberty to buy in at any sale by auction, to rescind or vary contracts for sale, and to re-sell without being answerable for any loss arising thereby: AND ALSO, to execute such deeds, surrenders or other instruments as may be required for conveying the property or any part thereof to any purchaser thereof, and to give effectual receipts and discharges for the purchase-money, and to enter into any covenant whether restrictive or otherwise: AND ALSO, in the meantime, and until such sale, to receive the rents and profits of the property, and to recover the same when in arrear by action or distress, and generally to exercise in reference to the property all the powers which are by the Settled Land Act, 1925, or any Act amending the same, conferred on a tenant for life in possession of land, and to do such other acts and things in or about the management of the property as the said Attorney [Attorneys or Attorney] shall think fit.

To purchase lands.

3. To purchase from time to time any lands and other rights which in the opinion of the said Attorney [Attorneys or Attorney] may be convenient to be held with my —— estate at such prices, and subject to such conditions as he [they or he] shall think fit, and to sign any contracts for that purpose, and to pay any deposit which may be required to be paid by the terms of the contract: ALSO to investigate the title to any property agreed to be purchased, and to make requisitions and objections in respect of the title, and to insist on or waive the same [with

power to accept any title from public bodies without any investigation]: ALSO to take any proceedings for specific performance of any such contract, or defend any proceedings which may be taken by the vendor to enforce the same, and to settle by reference to arbitration or otherwise any questions which may arise in relation to the contract or the title or evidence of title to the property: ALSO, on completion of the purchase, to pay the purchase-money or the remainder thereof, to register the title thereof if the land is within a compulsory area, and to execute any deed or other instrument (whether containing covenants by me or not) which may be thought necessary or proper, and generally to act in relation to any such purchase as the said Attorney [Attorneys or Attorney] shall think fit.

To extinguish manorial incidents.

4. (1) IN relation to my land at ——, formerly copyhold of the manor of ——, enfranchised by the Law of Property Act, 1922, to arrange, either by a compensation agreement or by a notice to determine the compensation for the extinguishment of the manorial incidents affecting that land, and for the acquisition (by agreement), if practicable, of the lord's rights to minerals and his sporting rights, the compensation to be paid either in a gross sum or by means of a compensation rentcharge, as the said Attorney [Attorneys or Attorney] may at discretion think fit:

(2) For these purposes to raise by way of legal mortgage of the said land or of a sufficient part thereof, all the costs incurred in effecting the said extinguishment and the amount of the compensation money, if paid in a gross sum, together with the costs of raising the said money:

(3) To grant to the lord of the said manor in or towards satisfaction of the compensation, a part of the said land, and any easements or rights over any part of such land:

(4) For these purposes to enter into agreements, serve notices, execute deeds and other instruments, and do or permit to be done any other act or thing for facilitating or giving effect to any such arrangements.

To re-enter and expel tenant.

5. To re-enter into and upon the houses, lands and property situated at, &c., comprised in and demised by a certain Lease dated the —— day of ——, and made between me, of the one part, and G. H., of the other part, or into and upon any part of the property in the name of the whole, and the said G. H., and all other tenants and occupiers thereof, thereout utterly to expel, remove and put out, and for the purpose of obtaining

possession of the said property, to take all such steps and proceedings at law or otherwise, and to do all such matters and things as the said Attorney [Attorneys or Attorney] shall think fit.

To receive bond debt.

6. To ask, demand, receive, sue for, and recover from X. Y., of, &c., the sum of £——, owing to me from him on a Bond dated, &c., and all interest due in respect thereof, and to give a proper receipt and discharge for the same.

To receive legacy.

7. To ask, demand, sue for, and receive of and from the executors of the Will of G. B., deceased, or other the person or persons liable to pay the same:

The legacy of £1,000 bequeathed to me by the said Will (after deducting the legacy duty thereon), and all interest (if any) due in respect thereof, and to give an effectual receipt and discharge for the said legacy and interest to the person or persons paying the same.

To receive share of residuary estate.

8. To receive from the executors and trustees of the Will of my father, G. B., deceased, or other the person or persons liable to pay or account for the same:

My one-third share or other my share or interest under the trusts of the said Will in the proceeds of sale of the real and residuary personal estate of the said testator (which real and residuary personal estate were by the said Will vested in trustees upon trust for sale and division among the testator's children [and issue], as in the said Will mentioned), and in the rents and annual income of the said real and residuary personal estate until the sale, and division thereof, and all other (if any) the money payable to me under the said Will, or any property real or personal appropriated to answer my share or interest: AND ALSO, to examine, approve and allow, or (at the discretion of the said Attorney [Attorneys or Attorney]), to disapprove and disallow all such accounts as shall from time to time be furnished by the said executors and trustees concerning the real and personal estate of the said testator, and the application and disposition thereof, and to compound, submit to arbitration, or otherwise settle all or any questions or disputes which may arise in relation to such accounts or to the testator's estate: AND ALSO, to permit the said executors and trustees to postpone the sale and conversion of any part of the said real and personal estate for so long as may be thought desirable, and to accept any part of the trust property unconverted in or towards satisfaction of my share or interest: AND ALSO, upon the distribution of the said

To settle accounts, &c.

To permit postponement of sale and conversion.

estate and the proceeds thereof, to execute for me and in my name to the said executors and trustees, such receipts, releases, and discharges from all actions, claims and demands, in respect of the testator's estate or my share therein, or any act, deed and matter or thing done or omitted to be done by the said executors and trustees or any of them in relation thereto, as the said Attorney [Attorneys or Attorney] shall think fit, and to enter into any covenant for indemnity similar to any such covenant as may be given by any other person beneficially interested under the said Will.

To execute releases to executors and trustees.

9. To receive from the personal representatives of the late H. B., who died intestate, on the ——, 19—, my share or interest in his estate or any property appropriated in or towards satisfaction of that share or interest, and any income attributable thereto, and to give valid receipts and releases in respect thereof, and in relation thereto to compromise my claims, and to enter into any covenants for indemnity on my behalf.

To receive share in intestate's estate.

10. To receive from E. F., of, &c., or any other person or persons who may pay the same, the principal sum of £——, owing to me upon the security of a Mortgage dated, &c., and made, &c. (*date and parties*), being a mortgage of property, in the Parish of ——, in the County of ——, and all interest owing thereon, and to give an effectual receipt for the same: AND ALSO, upon such receipt to execute any deeds or endorsed receipts, which my said Attorney [Attorneys or Attorney] shall approve, either for surrendering the property comprised in the said mortgage to the said E. F., or other the persons entitled to the right of redemption therein, discharged from the said mortgage and all money owing thereon: Or for conveying and transferring the benefit of the said mortgage to the persons making such payment as aforesaid.

To receive mortgage money, and upon receipt, execute reconveyance or transfer.

11. To act for me, a Lord of the Manor of ——, in the county of — —, and to do all acts and things which I could have done as lord of that manor and in particular to enter into compensation agreements, grant and accept rights and interests in or over land, give or receive notices to determine compensation, give receipts for compensation money, make application to the Minister of Agriculture and Fisheries and generally do all such acts and things as I could have done personally in relation to the said manor.

To act as lord of manor.

Add, if desired, at the end of the deed any of the following clauses :—

To appoint substitutes.

ALSO, to appoint and remove at pleasure any substitute or substitutes for all or any of the purposes aforesaid.

Add, as a general form in every case :—

Agreement to ratify acts of Attorney.

AND I AGREE to ratify and confirm whatever the said Attorney [Attorneys or Attorney] [or any substitute or substitutes appointed as aforesaid] shall do in the premises :

Irrevocable.

THIS power shall be irrevocable for one year from the date hereof. [*Add proviso as in last Precedent, if required.*]

IN WITNESS, &c.

No. III.

POWER *of* ATTORNEY *to* EXECUTE *a particular* DEED *mentioned in the* SCHEDULE.

THIS POWER OF ATTORNEY is made this —— day of ——, 19—, BY A. B., of, &c. (hereinafter called the Principal) : WHEREAS :—

Proposal to execute deed, of which a draft is set out in schedule.

(1) A Deed of Family Arrangement is proposed to be made between the Principal and his brothers and sisters, and the trustees of the Will of X. Y., dated, &c., in relation to the property held on the trusts of the said Will, and a draft of the proposed deed has been prepared, and a copy thereof is contained in the Schedule hereto :

Draft has been approved.

(2) The said draft has been approved by the Principal or on his behalf :

NOW THIS DEED WITNESSETH as follows :—

Appointment of attorney to execute deed.

1. THE Principal hereby appoints C. D., of, &c., to be the attorney of the Principal, to execute for him and in his name or otherwise, and as his act and deed, the deed to be engrossed from the said draft :

Power for attorney to consent to alterations in draft.

PROVIDED that the said Attorney (if he shall think fit) may consent to any alterations in the said draft before the engrossment thereof, so that such alterations shall not be inconsistent with the general purport and effect of the said arrangement as contained in the said draft.

2. THE deed, which shall be executed by the said Attorney in professed exercise of this power, shall be deemed to be the deed hereby authorised to be executed by him, notwithstanding any variations therein from the said draft, and his execution shall be conclusive evidence that the variations have been approved of by him, and are such as are hereby authorised.

3. THIS power shall be irrevocable for one year from the date hereof.

IN WITNESS, &c.

THE SCHEDULE.

(*To contain copy of draft.*)

No. IV.

DELEGATION *of* TRUSTS *by a* TRUSTEE *pursuant to* TRUSTEE ACT, 1925, S. 25 (*f*) [VARIATIONS *where the* STATUTORY POWER *is extended by the* TRUST INSTRUMENT *or an* EXPRESS POWER *is given to delegate*].

THIS POWER OF ATTORNEY is made this —— day of ——, 19—, BY A. T., of, &c. (hereinafter called the Principal): WHEREAS:—

(1) The Principal and B. T., of, &c., and C. T., of, &c., are the present trustees of a Settlement dated, &c. [the Will of R. S. dated, &c., and proved, &c.] [and also of a Vesting Deed dated, &c., *or*, Vesting Assent dated, &c., for the purposes of the Settled Land Act, 1925]: Trust instrument [and vesting instrument].

[(2) The said Settlement [*or* Will] contained a provision that for the purposes thereof [and of the Settled Land Act aforesaid], and notwithstanding anything to the contrary in section twenty-five of the Trustee Act, 1925, any trustee thereof might under [Extension of power or express power.]

(*f*) Under T. Act, 1925, s. 25, a sole co-trustee, not being a trust corporation, must not be appointed an attorney, otherwise the restriction on receipts of trustees for sale and S. L. Act trustees being given by less than two trustees would be evaded. Under sub-s. (2) the donor is liable for the acts of his attorney. Under sub-s. (3) the power does not come into force till the donor leaves the "United Kingdom" (s. 68 (20)), and is revoked by his return. He cannot make it irrevocable for a year. Statutory liabilities and restrictions.

Under sub-s. (4) the power must be attested by at least one witness and filed at the Central Office within ten days (this is too short a period) with a statutory declaration by the donor that he intends to remain out of the United Kingdom for more than a month from a stated date. The execution of the power and the declaration must be verified: sub-s. (5). If the power relates to a registered title an office copy must be filed at the Land Registry. Under sub-s. (7) the above declaration, with a statutory declaration by the attorney that the power has come into force and has not been revoked, is conclusive evidence of those facts in favour of a person dealing with the attorney. Statutory declarations.

A tenant for life or statutory owner can under the section give a power of attorney: sub-s. (14). Tenant for life.

the said section delegate his trusts, powers and discretions, free from the liabilities and restrictions imposed by sub-sections (2) to (5) inclusive, of the said section, and that any such power might be made irrevocable for one year from the date thereof **[***or*, contained the following express power for a trustee thereof to delegate [*set out the material parts of the power*]:**]**

Trustee is about to go abroad.

(3) The Principal is about to leave the United Kingdom for a period exceeding one month, and is desirous of appointing the said B. T. and C. T. (hereinafter called the Attorneys) [*or* the —— Company Limited, whose registered office is at —— (hereinafter called the Attorneys)], to be his attorneys in manner hereinafter appearing :—

NOW, in exercise of the said statutory power as extended by the said Settlement [*or* Will] [*or* in exercise of the power conferred by the Trustee Act, 1925] **[***or* in exercise of the express power conferred by the said Settlement [*or* Will]**]**, and of all other powers, THIS DEED WITNESSETH as follows :—

Delegation of trusts.

1. THE Principal hereby delegates to the Attorneys [and each of them jointly and severally] the execution of the trusts, powers and discretions of the said Settlement [Will] [and Vesting Instrument] including all trusts and powers implied or conferred by statute in relation thereto during his absence abroad.

2. IN order to give effect to this delegation the Principal hereby appoints the Attorneys [and each of them jointly and severally] to be his attorneys for him and on his behalf, and in his name or otherwise to execute any deeds or instruments, and to do all other things which in the opinion of the Attorneys [or Attorney] shall be required to be executed and done in or about the execution of the said trusts, powers and discretions, or any of them, including the statutory and other powers mentioned in sub-section (9) of section twenty-five of the Trustee Act, 1925.

3. THE Principal agrees to ratify and confirm whatever the Attorneys shall in good faith do in the premises.

[4. THIS power shall be irrevocable for one year if the Principal shall so long remain abroad.]

IN WITNESS, &c. [*If made under the statutory power this must be attested by at least one witness and be filed at the Central Office within ten days, with a statutory declaration by the donor that he intends to remain out of the United Kingdom for more than one month from a stated date.*]

No. V.

CONVEYANCE *of* LAND *by* PERSON *intending to reside abroad to* TRUSTEES *upon trust for* SALE *instead of a power of Attorney.*(*g*) (*Legal Estate.*)

THIS CONVEYANCE is made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called the Owner), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Trustees), of the other part : Parties.

WHEREAS the Owner is desirous of selling the property described in the Schedule hereto, but intends to reside abroad, and has accordingly arranged to convey the same to the Trustees to be held by them upon the trusts hereinafter declared : Desire to sell.

NOW, for effectuating the said desire, THIS DEED WITNESSETH as follows :—

1. THE Owner, As Beneficial Owner, hereby conveys unto the Trustees : Conveyance on trust for sale.

ALL AND SINGULAR the freehold property [enfranchised lands and leasehold properties] mentioned in the Schedule hereto and [as to freehold and enfranchised lands] and for the purposes only of identity delineated on the plan hereto and thereon [respectively] edged —— [and ——] :

TO HOLD unto the Trustees [as to the real estate] in fee simple [but as to enfranchised lands subject to the manorial incidents and rights of the lord affecting the same and as to leasehold properties for the residues of the respective terms for which the same are held and at the rents and subject to the lessee's covenants and conditions], Upon trust that the Trustees shall (without any further consent on the part of the Owner, or any person claiming under him) sell the premises or any part thereof.

2. UNTIL such sale the Trustees shall receive the rents and profits of the premises, and shall thereout pay all [rents], rates, taxes, costs of repairs, insurance, and other outgoings which in the opinion of the Trustees ought to be paid out of income, and Rents until sale.

(*g*) A purchaser under a power of attorney must (at any rate after the end of the fixed time for which it is made irrevocable) satisfy himself that the power has not been revoked. It may therefore be convenient, instead of giving a power, to vest the property by a conveyance in the intended attorneys upon proper trusts for sale. Conveyance more convenient than power.

The trustees for sale will have all the statutory powers of a tenant for life : L. P. Act, 1925, s. 28.

Stamp duty under s. 74 of the Fin. (1909-10) Act, 1910, will not be payable because no beneficial interest passes, see sub-s. (6). The stamp will be 10*s*. Stamp duty.

shall account for the balance to the Owner or the persons deriving title under him.

Declaration of trust of net proceeds of sale.

3. THE Trustees shall, out of the capital money to arise from any sale or other disposition made under the said trust for sale or any statutory powers, discharge all costs and expenses incurred in or about any such sale or other disposition [or in effecting any extinguishment of manorial incidents or in acquiring rights from the lord of a manor] or otherwise in reference to the trusts hereof, and which in the opinion of the Trustees ought to be paid out of capital, and shall stand possessed of the residue of the said money IN TRUST for the Owner absolutely.

Statutory covenants for title to apply.

4. THE covenants for title implied in a conveyance by virtue of section seventy-six of the Law of Property Act, 1925, shall apply as if this Deed were a conveyance for valuable consideration.(*h*)

Power to appoint new trustees.

5. THE Owner during his life shall have power to appoint a new trustee or new trustees hereof.

IN WITNESS, &c.

THE SCHEDULE.

[*If enfranchised lands or leaseholds are included as well as freeholds divide the Schedule into as many parts as there are different classes of property.*]

(*h*) Thus a purchaser from the trustees will be able to sue the settlor on these covenants.

Power to postpone.

Receipts for capital.

The trustees have power to postpone the sale at discretion and are not liable for so doing: L. P. Act, 1925, s. 25. Two trustees will be required to give receipts for capital unless a trust corporation is acting as trustee: *ib.*, s. 27.

CHAPTER IV.

Law of Partnership.

The law of partnership is now regulated by the Partnership Act, 1890, and the Limited Partnerships Act, 1907, see also the Registration of Business Names Act, 1916.(*a*)

Sect. I.—*As to partnership generally.*

Definition of partnership.

Partnership is the relation which subsists between persons carrying on a business in common with a view to profit. The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner, but does not of itself make him a partner. Thus, a servant or agent who by agreement receives a share of the profits by way of salary, or the widow or child of a deceased partner who receives a part of the profits by way of annuity, or a person who lends money to a person in business on a contract in writing, and signed by or on behalf of all the parties thereto, that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits, or a person receiving a part of the profits, by way of annuity, in consideration of the sale by him of the goodwill of the business, does not thereby become or remain a partner: Act of 1890, ss. 1, 2. But a person lending money on any such arrangement as is above described or the vendor of a goodwill will be postponed to other creditors in the event of the borrower's or purchaser's bankruptcy: s. 3; *Re Hildesheim* [1893], 2 Q. B. 357.

Postponement.

Illegal partnerships.

A partnership, otherwise lawful, may be rendered illegal for want of compliance with the provisions of the statutes which regulate business relations; for instance, under the Companies (Consolidation) Act, 1908, s. 1, a partnership, consisting of more than ten persons, cannot carry on the business of banking unless it is registered as a limited company; a partnership consisting of more than twenty persons cannot carry on any other business for the purpose of acquiring gain,

(*a*) See generally Lindley on Partnership (8th ed.) and Pollock's Digest of the Law of Partnership (11th ed.).

Business names.

unless it is so registered. By the Registration of Business Names Act, 1916, ss. 1–3, every individual or partnership carrying on business in the United Kingdon, otherwise than the real names of the members of the firm, must register, in the prescribed manner, the business name, the general nature of the business, the principal place of business, the true christian and surnames of the members of the firm, the present and original nationality of the members of the firm, the addresses and occupations of each of the partners, and where any of the partners are a corporation, this must include the corporate name and the registered or principal office of the corporation; former christian names and surnames and former nationality must also be registered. Where this Act is not complied with ss. 7 and 8 impose certain penalties and disabilities which render the partnership nugatory.(*b*)

Public policy.

Partnerships for unlawful purposes or for purposes which are contrary to public policy are also illegal, and the courts will not recognise them or enforce alleged rights. Thus, the court has refused to recognise a partnership for the sale of smuggled goods, or to order an account between two highwaymen; but the purposes for which such a partnership has been formed must, in themselves, be unlawful or contrary to public policy, or such a partnership must be expressly made illegal by statute.

Partnerships for betting purposes.

The best example of partnerships for purposes which are illegal, but not, of themselves, unlawful, are partnerships for betting purposes. These partnerships are legal, provided that they come within the rule as to public policy, and are not otherwise unlawful. For betting, though made illegal by statute, was legal at common law; there is no special statutory provision making betting a purpose for which partnerships cannot legally be formed: *Jeffrey* v. *Bamford* [1921], 2 K. B. 351; 90 L. J. K. B. 664.

Power of a partner to bind firm.

Every partner is an agent of the firm for the purpose of carrying on the business, and the acts of every partner who does any act for carrying on business in the usual way, of the

Invalidating contracts.

(*b*) Section 8 (1) is apparently limited to prohibiting the enforcement of contracts coming within its scope as between the immediate parties thereto: *Daniel* v. *Rogers* [1918], 2 K. B. 228; 87 L. J. K. B. 1149; the benefit may not pass to an assignee or trustee in bankruptcy: *Hawkins* v. *Duché* [1921], 3 K. B. 226; 90 L. J. K. B. 913. As to the power for the Court to grant relief: *Hawkins* v. *Duché*, *supra*; *Weller* v. *Denton* [1921], 3 K. B. 103; 90 L. J. K. B. 889; see also *Brown* v. *Thomas* (1923), 39 T. L. R. 132.

kind carried on by the firm, are binding on the other partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner: Act of 1890, s. 5. As to the question of the liability of a firm for contracts entered into by partners or others on behalf of the firm,(*c*) the general rule is that a partner has full authority to deal with the property for partnership purposes.(*d*) This rule, however, is subject to the qualification that a partner can only bind his firm so far as his actual or apparent authority extends: *Higgins* v. *Beauchamp* [1914], 3 K. B. 1192; 84 L. J. K. B. 631. Every partner is liable jointly with the other partners for all debts and obligations incurred while he is a partner.(*e*)

Partnership property.

All partnership property must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership articles: s. 20. Unless the contrary appears, property bought with money belonging to the firm will be deemed to have been bought on account of the firm: s. 21. Where land has become partnership property, it is to be treated, as between the partners and the persons respectively interested in their real and personal estate, as personal estate: s. 22.

Partnership land.

Before 1926, partnership land, whether freehold or leasehold, has generally been vested in the partners or some of them as joint tenants, though in some cases, it may have been vested in them as tenants in common. After 1925, whether it is vested in joint tenants or in tenants in common, it will be held on a joint tenancy upon trust for sale: L. P. Act, 1925, ss. 34–36; 1st Sch., Pt. IV.

Vesting provisions.

If the land is vested in more than four of the partners as tenants in common (*ib.*, 1st Sch., Pt. IV, para 1 (2)) it will vest in the Public Trustee: *ib.*, para 1 (4), till the partners appoint new trustees in his place.

Number of trustees for sale, limit after 1925.

After 1925, land must not be vested in more than four trustees for sale; T. Act, 1925, s. 34 (2). Usually four of the partners will be selected to hold partnership land.

(*c*) Sections 5, 6, 7, 8, 9; *Keen* v. *Mear* [1920], 2 Ch. 574; 89 L. J. Ch. 513.

(*d*) *Ex p. Darlington, &c., Banking Co.* (1865), 4 De G. J. & S. at p. 585; 34 L. J. Bk. 10; *Re Briggs* [1906], 2 K. B. 209; 75 L. J. K. B. 591.

Deceased partner.

(*e*) Section 9. But the estate of a deceased partner is not liable for transactions completed subsequent to his death: *Re Friend* [1897], 2 Ch. 421; 66 L. J. Ch. 737.

Procedure against partnership property for partner's separate judgment debt.

A writ of execution will not issue against partnership property, except on a judgment against the firm. But the Court may, on the application of a judgment creditor of a partner, make an order charging the partner's interest in the partnership property and profits with the debt, and may appoint a receiver of his share of profits and of any other money coming to him as partner: s. 23.

Pending actions.

In the case of a petition in bankruptcy filed against a firm the application to register the pending action must state the names and addresses of the partners and the registration will be effected against each partner as well as against the firm: L. C. Act, 1925, s. 2 (4).

Rules as to interests and duties of partners, subject to special agreement.

Subject to any agreement to the contrary, the following rules apply:—

(1) All the partners share equally in profits and losses:

(2) The firm must indemnify every partner in respect of liabilities in the ordinary and proper conduct of the business of the firm, or anything necessarily done for the preservation of its property:

(3) A partner advancing money beyond his share of capital is entitled to interest at £5 per cent. per annum:

(4) A partner is not entitled before the ascertainment of profits to interest on his capital:

(5) Every partner may take part in the management of the business:

(6) No partner is entitled to remuneration:

(7) No person may be introduced as a partner without the consent of all:

(8) Differences as to ordinary matters may be decided by a majority of the partners:

(9) The partnership books are to be kept at the principal place of business, and every partner is to have access to them: Act of 1890, s. 24.

Partner may appoint agent to inspect books.

A partner may appoint an agent to inspect the books on his behalf, provided that the agent be a person to whom no reasonable objection could be taken by the other partners, and the agent undertakes not to make use of the information thus acquired except for the purpose of confidentially advising his principal: *Bevan* v. *Webb* [1901], 2 Ch. 59; 70 L. J. Ch. 536.

Retirement from partnership at will; and where

Where no fixed term has been agreed on for the duration of the partnership, it may be determined by any partner by notice. Where a partnership entered into for a fixed term has been

continued beyond the term, the rights and duties of the partners remain the same so far as is consistent with a partnership at will: ss. 26, 27; and see note to Form No. 2, *infra*. partnership for a term has been continued over, continuance on old terms preserved.

Partners are bound to render true accounts and full information to one another: s. 28. Information.

An assignment by a partner of his share in the partnership does not entitle the assignee, during the continuance of the partnership, to interfere in the management or to require an account of the partnership transactions, but only to receive the assignor's share of profits: Act of 1890, s. 31; *Re Garwood's Trust* [1903], 1 Ch. 236; 72 L. J. Ch. 208. In the case of a dissolution the assignee is entitled to receive the assignor's share of the assets, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. His rights in this respect cannot be altered by an arrangement made between the partners after notice of the assignment fixing the value of the share: *Watts* v. *Driscoll* [1901], 1 Ch. 294; 70 L. J. Ch. 157. Rights of assignee of share in partnership.

Subject to any agreement between the partners, the partnership is dissolved as regards all the partners by the death or bankruptcy of a partner; it may be dissolved at the option of the other partners if any partner suffers his share of the partnership property to be charged under the Act for his separate debt: s. 33. Dissolution by death or bankruptcy or charge.

No majority of the partners can expel any partner unless a power to do so is conferred by express agreement between the partners: s. 25. Hence, special clauses as to expulsion are generally inserted in partnership articles; such clauses are construed strictly by the Court.(*f*) In the absence of bad faith a notice to terminate a partnership is valid, though the partner serving the notice has not first disclosed to his co-partner the causes of complaint: *Green* v. *Howell* [1910], 1 Ch. 495; 79 L. J. Ch. 549. Expulsion of partner.

The Court may dissolve the partnership in the following cases: If a partner is found lunatic or shown to be of unsound mind, or becomes in any other way permanently incapable to perform his part of the partnership contract, or has been guilty of conduct calculated to affect prejudicially the business, or wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself that it is not reasonably practicable for Dissolution by Court; for what causes.

(*f*) *Blisset* v. *Daniel* (1853), 10 Hare, 493; *Barnes* v. *Youngs* [1898], 1 Ch. 414; 67 L. J. Ch. 263.

the other partners to carry on the business in partnership with him, or where the business can only be carried on at a loss, or whenever any other circumstances have arisen rendering it just and equitable that the partnership should be dissolved: Act of 1890, s. 35.

Rights of persons dealing with firms against apparent members of firm.

Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the firm as still being members, until he has notice of the change. A notice in the *London Gazette* is notice to persons who had not dealings with the firm before the date of the dissolution or change so advertised: s. 36.

Continuing authority of partners for purpose of winding up.

After a dissolution, the authority of each partner to bind the firm and the other rights and obligations of partners continue so far as is necessary to wind up the affairs of the partnership and to complete unfinished transactions, but not otherwise: s. 38; see also s. 39, and *Re Bourne* [1906], 2 Ch. 427; 75 L. J. Ch. 779.

Rights of partners as to application of partnership property on dissolution.

In settling accounts on a dissolution, losses are paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits. The assets of the firm are applicable, first, in paying the debts of the firm to persons not being partners; next, in paying to each partner rateably what is due to him for advances as distinguished from capital; next, in paying what is due to him rateably in respect of capital; and the ultimate surplus is divisible among the partners in the proportion in which profits are divisible.(*g*)

Special provisions still necessary to prevent winding up, on death, &c., of partner.

Plan for ascertaining value of deceased partner's share, by reference to last yearly account,

The above enactments render superfluous some of the provisions which were formerly inserted as common forms in partnership deeds. It is still necessary, where it is wished that on the death or retirement of a partner the partnership should continue as regards the others, to insert special provisions to that effect. One plan is to provide that the share of capital shall be taken at its value as ascertained by the last yearly balance sheet, and that some fixed sum by way of interest from that time up to the death or retirement shall be allowed in lieu of profits. This plan obviates the necessity for any new balancing of accounts; but it is open to this objection, that if there should have been any serious loss since the last stocktaking, the loss will fall on the continuing partners alone. Another plan is to

(*g*) Section 44. As to the working of this section, see *Garner* v. *Murray* [1904], 1 Ch. 57; 73 L. J. Ch. 66.

give to the continuing partners the option of purchasing the share at a valuation, to be made on the day of the death or retirement. A clause of this kind will be enforced, and if the valuation cannot be made by the person and in the manner directed, the Court will ascertain the value : *Hordern* v. *H.* [1910], A. C. 465 ; 80 L. J. P. C. 15. or by valuation.

The goodwill of the business is part of the partnership assets, and on a dissolution should be sold with the other assets for the purpose of division. The purchaser on such sale will have the exclusive right to use the firm name, and the former partners will be restrained from soliciting the customers of the firm.(*h*) Goodwill to be sold on dissolution.

Under a clause enabling a surviving or continuing partner to buy the share of a deceased or retiring partner at a valuation, the goodwill is included, and the partner so purchasing has the exclusive right to the firm name, and the representatives of the deceased or retiring partner will be restrained from soliciting the customers of the firm,(*i*) even though the articles contain a provision that nothing therein contained should prevent either partner from starting a similar business in the neighbourhood : *Gillingham* v. *Beddow* [1900], 2 Ch. 242 ; 69 L. J. Ch. 527. To be included in purchase by surviving partner.

If, however, it is part of the arrangement on a dissolution that the goodwill shall not be sold, each of the old partners will be at liberty to carry on business in the name of the late firm, provided that in so doing he does not expose his former partner to any risk of liability.(*j*) Rights of late partners, when goodwill not sold.

Sect. II.—*Limited Partnership.*

The Limited Partnerships Act, 1907, which came into operation on the 1st of January, 1908, extends or modifies the law of partnership by legalising a new form of partnership called limited partnership.

The essential feature of a limited partnership is that it must consist of one or more persons called general partners with unlimited liability, and one or more persons called limited partners who contribute, to the partnership assets, money or property of a stated amount, but are not liable for the debts or obligations of the firm beyond the amount so contributed : s. 4 (2). Essence of limited partnership.

(*h*) *Trego* v. *Hunt* [1896], A. C. 7 ; 65 L. J. Ch. 1 ; *Curl Brothers* v. *Webster* [1904], 1 Ch. 685 ; 73 L. J. Ch. 540.

(*i*) *Jennings* v. *J.* [1898], 1 Ch. 378 ; 67 L. J. Ch. 190 ; *Re David and Matthews* [1899], 1 Ch. 378 ; 68 L. J. Ch. 185.

(*j*) *Banks* v. *Gibson* (1865), 34 Beav. 566 ; 34 L. J. Ch. 591 ; *Burchell* v. *Wilde* [1900], 1 Ch. 551 ; 69 L. J. Ch. 314.

Disabilities of limited partner.

A limited partner may not, during the continuance of the partnership, draw out or receive back any part of his contribution; s. 4 (3); nor take part in the management of the partnership business, and has no power to bind the firm: s. 6 (1).

Effect of death, bankruptcy, or lunacy.

Moreover, unlike an ordinary partnership, a limited partnership is not dissolved by the death or bankruptcy of a limited partner, nor is the lunacy of a limited partner a ground for dissolution by the Court unless the lunatic's share cannot be otherwise ascertained and realised: s. 6 (2). Having regard to the wording of s. 6 (1), it will be extremely dangerous for a limited partner to interfere in any way in the management of the business of his firm; he would be well advised to refrain from any interference whatever.

Limited partner should not interfere.

Winding up order.

Where a general partner acts in a way which may prejudicially affect the business, a limited partner can obtain a winding up order.(*k*)

Registration of partnership.

Every limited partnership must be registered with the registrar of limited partnerships at the office for registration of joint stock companies: ss. 5, 15.

Act not widely adopted.

Having regard to the greater facilities and immunity afforded by the Companies (Consolidation) Act, 1908, the Limited Partnerships Act, 1907, is seldom resorted to, even in the case of small undertakings, and does not prove attractive to large capitalists.

The most serious objections are:

Ad valorem duty.

(i) The *ad valorem* duty of 5*s.* per cent. on the capital contributed by the limited partner: s. 11, which would be a serious consideration in the case of a sleeping partner who owned the greater part of the capital in the business;

Disabilities.

(ii) The restrictions imposed upon a limited partner in respect of the management of the business; and

Publicity.

(iii) The publicity of the whole transaction: ss. 5, 8, 9, 10, 14, 16.

(*k*) Limited Partners (Winding Up) Rules, 1909; *Re Hughes & Co.* [1911], 1 Ch. 342; 80 L. J. Ch. 262.

DIVISION VI.

PARTNERSHIP.

PART I.

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LIST OF FORMS IN PARTNERSHIP DEEDS.

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(FORMS) PARTNERSHIP.

SECTION I.

Agreements For and Duration of Partnership.

No. 1. Agreement for partnership.

THE parties hereto (hereinafter collectively referred to as the Partners) hereby severally covenant with each other that they [and the survivors of them (*a*)] will become and be partners in the profession [*or* trade or business] [*or* business] of ——, [in continuation of the business carried on for many years by ——] upon the terms and subject to the conditions hereinafter contained (that is to say) :—

No. 2. Commencement and duration of partnership for a fixed term.

THE partnership shall commence on the —— day of ——, and shall thenceforth continue for the term of —— years, and shall not be determined as regards the other partners by reason of the death, [bankruptcy, retirement, lunacy, incapacity, or expulsion,] of any partner.(*b*)

No. 3. The like for definite term determinable.

THE partnership shall commence on the —— day of ——, and shall thenceforth continue for the term of —— years, but subject to determination under the provisions hereinafter contained.(*c*)

No. 4. The like for determinable indefinite period.

THE partnership shall commence on the —— day of ——, and shall continue until determined by at least —— months' notice in writing given by either [any] partner to the other[s] or left at the place of business of the firm.(*d*)

(*a*) These words will only be used where there are more than two partners, and it is intended that on the death, retirement or discharge of a partner the survivors may carry on the business.

Notice to determine.

(*b*) If no fixed time is agreed for the duration of the partnership, any partner can (apart from agreement) determine the relation at any time by notice in writing: P. Act, 1890, ss. 26 and 32 (*c*); *Moss* v. *Elphick* [1910], 1 K. B. 846; 79 L. J. K. B. 631. Also (apart from agreement) a partnership is dissolved—

Other modes of termination.

(1) where the term is fixed, at the expiration of the term;

Partnership at will.

(2) where the partnership is for a single undertaking, at the termination of the undertaking: s. 32 (*a*) and (*b*). A partnership carried on after the expiration of the agreed term becomes a partnership at will: *Featherstonhaugh* v. *Fenwick* (1810), 17 Ves. 307; *Neilson* v. *Mossend Iron Co.* (1886), 11 A. C. 298; *Daw* v. *Herring* [1892], 1 Ch. 284; 61 L. J. Ch. 5; *Brooks* v. *B.* [1901], 85 L. T. 453. The death or bankruptcy of any partner determines the whole partnership apart from express agreement: s. 33 (1);

Death, bankruptcy, lunacy.

(3) The Court may dissolve the partnership in the case of lunacy, incapacity, &c.: s. 35.

(*c*) See note to last Form.

(*d*) See note to last Form but one.

Section II.

Name of Firm and Place of Business.

No. 5.
Name of firm.

THE name of the firm shall be ——.(*e*)

No. 6.
Place of business; acquisition of land.

(1) THE [principal] partnership business shall be carried on at ——, or upon such other premises as the Partners shall from time to time agree [and the branch businesses of the partnership shall be carried on at —— and ——, or at such other places as the Partners may determine]:

(2) THE legal estate in all real estate and chattels real acquired for the purposes of the firm or as part of the business thereof shall (without prejudice to the rights of an individual partner) be vested in not more than four of the partners and not less than two, Upon trust for sale, and the net proceeds of sale and other capital money shall (without prejudice as aforesaid) form part of the partnership assets:

(3) THE trustees for the time being shall be given full power to raise money on the property acquired for the general purposes of the business and such other powers (in addition to the statutory powers of trustees for sale) as the partners may think fit:

(4) THE trustees shall give effect to the directions of the partners, but no purchaser, mortgagee, lessee or other person dealing with the trustees for money's worth shall be concerned to see whether any and what directions have been given: (*f*)

[(5) So long as any outgoing partner or the personal representatives of a deceased partner, trustee in bankruptcy, committee or receiver in lunacy, of any partner shall have any interest in any assets of the firm then and in any such case no additional trustee for sale (not being a partner) shall be appointed under the statutory power without the consent of the outgoing partner or other person interested as aforesaid: Provided that no purchaser, mortgagee, lessee or other person dealing with the trustees for money's worth shall be concerned to see whether any such consent is required or whether the consent has been given:]

(*e*) The firm's name and other particulars must be registered in accordance with the Registration of Business Names Act, 1916. Registration of Business Names Act.

(*f*) See L. P. Act, 1925, ss. 23 (duration of trust for sale), 25 (power to postpone) 26 (consents to exercise of powers, &c.), 27 (receipts of two trustees), 28 (statutory powers), 34 (undivided shares), 35 (statutory trusts of proceeds), 36 (beneficial joint tenancies); also T. Act, 1925, ss. 34 (restriction on number of trustees), 35 (appointments of new and additional trustees).

No. 7.

The like where premises are vested beneficially in one partner and firm pay a rent.

(1) THE partnership business shall be carried on at ——, which premises are now vested beneficially in the said —— in fee simple [for the residue of a term of —— years from the —— day of ——, granted by a Lease dated the —— day of ——]:

(2) THE firm shall be deemed to be tenants of the premises to the said ——, at the yearly rent of £——, payable half-yearly, on the —— day of —— and the —— day of —— in every year, and shall pay all rates and taxes payable in respect of the premises, and shall keep the same in good repair [except external repairs and painting, which shall be done by and at the expense of the said ——], and insured against loss or damage by fire to the full value thereof. The tenancy may be determined by the firm on the —— day of —— in any year by at least six months' notice in writing, but the said —— or his representatives shall not determine the tenancy so long as the firm shall desire to carry on business upon the premises, and then only by notice in writing.(*g*)

(3) A lease shall (when so required by the partners) be granted for giving effect to this clause, and when so granted shall be vested in not more than four or less than two of the partners [the following four of the partners, namely ——] on trust for sale, and the trustees shall hold the net proceeds of sale and the rents and profits until sale in trust for the partners according to their shares.

(4) THE trustees for the time being of the said lease shall have power to raise money generally for the purposes of the partnership in accordance with the directions of the partners, but no mortgagee shall be concerned to see that such directions have been given.

Power for surviving partner to purchase the property.

(5) IF the said —— dies during the continuance of the partnership, the said —— (*other partner*) shall have the option (to be exercised by notice in writing given to the representatives of the said —— within one year from his death) of purchasing the premises from his representatives [for an estate in fee simple

---

(*g*) In most cases it is better that the partner should grant a lease of the property to four members of the firm. If the fee simple belongs to the partners in equal shares a value can be put thereon and the property treated as part of the firm's capital. The land must be vested in not more than four partners in trust for sale.

Tenancy.

Apart from an express arrangement, where the premises belong to one partner, and the firm pays rent, the tenancy continued only during the partnership term: *Pocock* v. *Carter* [1912], 1 Ch. 663; 81 L. J. Ch. 391, but after 1925 the tenancy should be made terminable by notice in writing.

in possession free from incumbrances at the price of £——, the title to commence with ——] [for the residue of the term of years now vested in the said ——, the title to commence with the lease and the price to be as follows (that is to say)— [Variation if a lease is purchased.]

(i) If the said —— dies on or before the —— day of —— next, then the price to be £—— ;

(ii) But if he dies at any subsequent period, then the price shall be reduced by £—— at the expiration of every clear period of six months during which the said —— shall survive the said —— day of —— next ;

(iii) But no reduction shall be made on account of any period less than six months, the purchaser to take subject to the payment of the yearly rent of £—— reserved by the said Lease, and to the observance and performance of the covenants and conditions in that Lease contained, and on the lessee's part to be observed and performed ;

(iv) Provided that the said —— (*other partner*) shall, without requiring the production of the lessor's title, accept an assignment of the premises for the residue of the said term subject as aforesaid, and shall give the usual implied covenant for indemnity, which shall extend to the estate and effects of the said ——, such assignment to be prepared by and at the expense of the said —— (*other partner*)].

No. 8.

The like where a lease has been taken in the names of partners with provisions as to death, bankruptcy, &c.(*h*)

(1) THE partnership business shall be carried on upon the leasehold property known as ——. That property was demised by a Lease dated, &c., and made, &c., to the Partners [to the said ——] on trust for sale, the net proceeds and rents and profits until sale to be held as part of the partnership assets or profits, but with power to raise money generally for partnership purposes, for the term of —— years from the —— day of —— at the yearly rent of £—— and subject to the covenants by the Partners [the said trustees] and the conditions therein contained.

(2) THE net proceeds of sale and rents and profits of said Lease, vested in the Partners [said trustees] as joint tenants on trust for sale shall be held IN TRUST for the partners [in equal shares] [in the shares in which they are respectively entitled to

(*h*) Where some of the partners take a lease as trustees for the firm, they are entitled to be indemnified by the other partners, though they have assigned their beneficial interests: *Matthews* v. *Ruggles Brise* [1911], 1 Ch. 194; 80 L. J. Ch. 42.

participate in the profits of the firm] as part of the assets or profits of the firm.

(3) ON the death or discharge of any partner his beneficial interest in the Lease or the said proceeds of sale shall be purchased or dealt with as part of his share in manner hereinafter provided.

(4) ON the death, bankruptcy, lunacy, retirement, or expulsion of a partner in whom the Lease may be vested, proper assurances or appointments of new trustees shall be executed for vesting the Lease in the other partners or partner.

(5) THE outgoing partner, in consideration of the covenants by the other partners or partner herein contained, hereby irrevocably appoints the other partner [or partners and each of them jointly and severally] to be his [attorneys or] attorney, in his name and on his behalf and as his act and deed or otherwise, to sign, seal or deliver any such appointment and assurance as aforesaid, and to give any receipts or to do any other act or thing for effectually vesting the said Lease in the other partner [or partners] free from all claims by the outgoing partner or his trustee in bankruptcy, committee, or receiver in lunacy and where so required on trust for sale:

PROVIDED that any consideration which may be payable hereunder in respect of any such assurance shall ultimately be accounted for to the outgoing partner or his representatives, trustee, committee, or receiver as the case may require.

(6) NO person dealing with the persons in whom the said Lease may for the time being be legally vested, for money or money's worth, shall be concerned to see or inquire whether the firm or other persons beneficially interested have consented to or concur in the dealing or disposition.(*i*)

SECTION III.

Capital of Firm.

No. 9.

Capital contributed equally.

THE capital of the firm shall be the sum of £ ——, which has been contributed by and shall be deemed to belong to the partners in equal shares. [And if at any time hereafter it shall be determined by a majority of the partners to increase the capital of the firm, such additional capital shall (unless otherwise agreed) be advanced by the partners in equal shares.]

(*i*) These provisions will keep the partnership articles off the title to the land except where the irrevocable power of attorney is exercised. This form can be adapted to the case where the fee simple is vested in the partners as joint tenants on trust for sale; and see P. Act, 1890, s. 22.

No. 10.
The like unequally.

THE capital of the firm shall be the sum of £——, which has been contributed by the partners as follows:—

(1) THE sum of £—— (being one-half of the capital) by the said ——:

(2) THE sum of £—— (being one-quarter of the capital) by the said ——:

(3) THE sum of £—— (being the remaining one-quarter of the capital) by the said ——.

THE said capital shall (subject to any entry in the partnership books to the contrary) be deemed to belong to the respective partners in proportion to the shares respectively contributed by them as aforesaid.

No. 11.
Where capital consists of cash and stock-in-trade or chattels.

THE capital of the firm shall (unless and until varied by the Partners) be deemed to be the sum of £——, which belongs to the partners equally [in the shares in which they are respectively entitled to participate in the profits of the firm], and is made up as follows—

(i) THE sum of £——, being the agreed value of the stock-in-trade [furniture, papers, documents, fittings, and other chattels] of the firm in or about the aforesaid premises [or elsewhere];

(ii) THE sum of £——, cash standing to the credit of the firm at the —— Bank.

No. 12.
Where plant and cash brought in unequally.

THE capital of the firm shall be the sum of £——, to be brought in by and to be deemed to belong to the partners in the shares following, namely: as to one-half by the said ——, as to one-quarter by the said ——, as to one-eighth by the said ——, and as to the remaining one-eighth by the said ——, and to be made up as follows (that is to say)—

(i) THE implements and plant now used in the said business shall be deemed to be of the value of £——, and to be brought in by the partners in the shares aforesaid;

(ii) THE sum of £—— cash, shall be paid to the credit of the firm at the —— Bank, by the partners in the shares aforesaid immediately after the execution of these articles.

No. 13.
Where capital consists wholly of property brought in by one partner.

(1) THE initial capital of the firm shall be deemed to be the sum of £——, which belongs exclusively to, and shall remain the separate property of, the said ——, and is made up as follows [*or*, of the items mentioned in the Schedule hereto]—

(i) THE sum of £——, being the agreed value of the fee simple of the freehold property known as ——, free from incumbrances;

(ii) THE sum of £——, being the agreed value of the leasehold property known as ——, and now vested in the said ——, for a term of —— years, from the —— day of ——, at a yearly rent of £——, under a Lease dated, &c.;

(iii) A sinking fund policy fully paid for securing payment of the sum of £——, on the expiration of the said Lease;

(iv) THE sum of £——, being the agreed value of the stock-in-trade of the said business;

(v) THE sum of £——, being the agreed value of the machinery and plant used for carrying on the said business;

(vi) THE sum of £——, being the agreed value of the office furniture, fittings, and other like chattels;

(vii) THE sum of £——, cash standing to the credit of the firm at the —— Bank.

(2) THE capital may from time to time be increased by the said —— to a sum not exceeding in the whole £——, without the consent of any other partner, or may from time to time be reduced by him to a sum of not less than £—— without the consent of any partner.

(3) NO partner shall be entitled to provide any capital for the firm without the consent of the said ——.

(4) SUBJECT as aforesaid the capital of the firm shall only be varied with the consent of all the partners.

No. 14.

Where inventions, plant, &c., brought in by one partner and cash by another.(*j*)

THE capital of the firm shall be the sum of £——, made up and to be contributed as follows—

(i) THE sum of £——, being the agreed value of the inventions, plant, stock-in-trade, office furniture, fittings and effects, contributed by the said —— and placed to his credit in the books of the firm (representing —— (*fraction*) of the said capital);

(ii) THE sum of £——, to be paid by the said —— to the credit of the firm at the —— Bank, immediately after the execution hereof (representing the remaining —— (*fraction*) of the said capital).

No. 15.

Where two bring in plant, &c., another cash, and a fourth provides capital out of profits.

THE capital of the firm shall be the sum of £——, made up and brought in as follows:—

(1) THE plant and stock-in-trade in and upon the aforesaid premises, belonging to the said —— and —— in equal shares,

(*j*) A common case to which this Form would apply is where one partner has started a business, and requires further capital and assistance to carry it on. Regard is, in such a case, sometimes had to the value of the goodwill in agreeing the value of the plant.

shall be the property of the firm, and the said —— and ——, shall each be credited in respect thereof in the partnership accounts with the sum of £—— as capital brought in by him.

(2) THE said —— shall forthwith pay the sum of £—— to the credit of the firm at the —— Bank, and in respect thereof shall be credited in the partnership accounts with the said sum as capital brought in by him.

(3) THE said —— shall bring in the sum of £—— out of his share of profits as hereinafter provided.(*k*)

No. 16.
Where capital is to be indefinite.

(1) THE capital (if any) of the firm shall be such sum as the partners shall from time to time agree to contribute.

(2) EACH partner shall be entitled to the capital from time to time contributed by him and standing to his credit in the books of the firm.

(3) NO partner shall, without the consent of the other partner[s], be entitled to contribute more than the amount standing to the credit of any other partner.

No. 17.
Where capital is to be subscribed according to shares in profits.

THE capital (if any) from time to time required for carrying on the partnership business shall (unless otherwise agreed among the Partners) be contributed by the Partners in the same proportions as they are entitled to participate in profits.

No. 18.
Certain chattels and goodwill to remain the property of one partner.

ALL the [inventions belonging to the said ——, and any improvements thereof, and the] office furniture, books, and other chattels in or about the aforesaid premises (an inventory whereof has been signed by the partners), [and also the goodwill and trade name of the business], shall remain and be the exclusive property of the said ——, and the firm shall be liable to replace any of the said chattels which may be lost, injured, or destroyed, but shall not be liable in respect of ordinary wear and tear, [and the firm shall be entitled during the continuance of the partnership to make use of the said inventions and any improvements thereof free of any charge (save that interest shall be allowed to the said ——, on the capital value of the said items from time to time stated in the books of the firm)].

SECTION IV.

Interest, Profits, Losses, and Sinking Fund.

No. 19.
Interest on capital.

EACH partner shall be entitled to interest at the rate of £—— per cent. per annum upon the amount of capital for the time

(*k*) See Form No. 23, next page.

being standing to his credit in the books of the firm, and such interest shall be paid or credited before any division of profits is made.

No. 20.
Interest on loans.

(1) ANY partner may, with the concurrence of the other partners, advance money to the firm, either by the payment of a capital sum or by leaving undrawn profits to which he is entitled, and any money so advanced shall be deemed to be a loan to the firm, and shall carry interest as from the date of payment or from the date when such profits might have been withdrawn under the provisions hereof, at the rate of £—— per cent. per annum.

(2) ANY such loan or any part thereof shall be repayable after the expiration of at least —— months' notice in writing given by the lender to the other partner [or partners] and left at the head office of the firm requiring payment of the same or by the other partner [or partners] to the lender of the intention to discharge the same, and the lender shall accordingly be bound to withdraw the loan to which the notice relates at the expiration of such notice and in default the loans shall cease to carry interest.

No. 21.
Profits and losses to be divided equally.

THE profits and losses of the business shall be divided and borne between the partners in equal shares.

No. 22.
The like unequally.

THE profits of the business shall belong as to —— shares thereof to the said ——, and as to the remaining —— shares thereof to the said ——, and they shall respectively bear in the same proportion all losses arising in connexion with the business.

No. 23.
Profits and losses to be divided unequally; part of profits of one partner to be capitalised.

(1) THE profits and losses of the business shall be divided and borne between the partners as follows, namely: the said —— shall be entitled to and shall bear three fourth parts thereof, and the said —— the remaining one fourth part thereof.

(2) WHENEVER the one fourth share of profits belonging to the said —— shall in any year exceed £——, he shall leave the excess in the said business as so much capital brought in by him, until by that means his capital shall amount to £—— [*or* to the sum for the time being standing to the credit of the said ——, as his capital in the business].

No. 24.
Profits and losses in same proportion as shares in capital.

THE profits and losses of the business shall be credited to and borne by the partners in the same proportions as their respective shares in the capital of the firm.

No. 25.
Where one partner is not to receive less than a fixed sum in respect of profits.

(1) THE said —— shall not in any one year receive less than the sum of £—— in respect of his share of profits, and if in any year his share shall be less than that sum the shares of the other partners or partner in the same year shall abate accordingly.

(2) IF the total profits in any year shall not be sufficient to pay the said sum of £——, then the said —— shall bear the loss [*or*, then the other partner or partners shall make good such deficiency to the said —— out of their respective profits in any subsequent year of the partnership, but shall not in other respects be personally liable to make good the deficiency].

No. 26.
Where partner is to be exclusively entitled to profits arising from a professional appointment.

(1) THE said —— shall be exclusively entitled to the salary, remuneration, or other profits arising from his appointment as clerk to the —— Board [surgeon to ——], but subject as aforesaid the profits and losses of the business shall, &c. (*continue as in preceding Forms*).

[(2) FOR the purposes of the said appointment, and in connexion with the business thereof, the said —— shall be entitled to employ the clerks and other servants of the firm without making any payment therefor to the firm [*or*, on making a yearly payment of £—— to the firm in respect of such services].

(3) ALL stationery and other articles required by the said —— in relation to the said appointment shall be paid for by him.]

No. 27.
Partners not to account for legacies or gifts from clients.

IN ascertaining the profits of the firm a partner shall not be required to account for the value of any devise, bequest, or other gift from any client, but property so acquired shall belong to such partner for his own use.

No. 28.
Costs on loans to clients and out-of-pocket expenses of a partner.

(1) THE costs charged to any client of the firm on a loan to him by a partner out of his own money shall be brought into account in ascertaining the profits of the firm, but (except where a partner employs the firm in connexion with any litigious business on his own behalf) no costs shall be charged by the firm against a partner.

(2) EACH partner shall refund to the firm any out-of-pocket expenses incurred in connexion with his private business.

No. 29.
Reserve Fund to meet liabilities.

(1) A FUND (hereinafter called the Reserve Fund) shall be formed by setting aside in each year out of the net profits before division the yearly sum of not less than £——, and by investing the same and the resulting income thereof in the way of compound interest in the names or under the control of the partners

in any investments which the Partners may from time to time agree, with power to vary investments.

(2) THE Reserve Fund shall be applied in such manner as the partners may agree in discharging any liabilities of the firm which they may consider of an unusual character or in equalising the yearly profits, and until so applied shall belong to the Partners in the shares in which they are for the time being entitled to profits.

(3) THE Reserve Fund shall not at any one time exceed the aggregate sum of £——, and the said yearly sum shall not be set aside nor accumulations made when such aggregate sum shall have been accumulated; but if at any time during the subsistence of the partnership the Reserve Fund shall be reduced below such aggregate sum the said yearly sum shall in every such case be set aside and the accumulations continued until the amounts withdrawn shall have been recouped.

(4) IF and so long as the Reserve Fund shall amount to the aggregate sum of £——, the annual income thereof shall be paid to the partners in the shares in which they are for the time being entitled to profits.

No. 30.
The same; a short form.

(1) IMMEDIATELY after taking the annual account, one tenth part of the net profits for the past year shall be set apart as a Reserve Fund to meet future losses and extraordinary expenses until the Reserve Fund shall amount to £——.

(2) THE Reserve Fund shall be invested from time to time in investments agreed by the partners with power to vary investments, and the income thereof shall be deemed to be part of the profits of the business and shall be divided accordingly.

(3) IF the Reserve Fund, after having been at its full amount, shall be diminished, one tenth part of the net annual profits shall again be added thereto until it reaches its full amount, and so on from time to time as occasion may require.

No. 30A.
Insurance against negligence.

A policy of assurance against liabilities to be met in any year and attributable to alleged negligence in dealings with the affairs of clients of the firm up to a sum not exceeding £—— in any year shall be effected in the names of the partners and maintained out of profits and any excess not covered by such insurance shall be made good by the firm:

PROVIDED that if the said liabilities do not exceed in any year the sum of £—— those liabilities shall be discharged exclusively by the firm.

No. 31.
Firm's banking account; separate account of clients' money.

(1) THE bankers of the firm shall be ——, or such other bankers as the firm shall from time to time agree.

(2) ALL money (not required for current expenses) and securities belonging to the firm shall be paid to or deposited for safe custody with their bankers.

[(3) THE amount standing to the credit of the firm at their bankers shall not by means of drawings of or on account of profits be at any time reduced below the sum of £——.]

(4) EACH partner shall be entitled to sign and draw cheques on behalf of the firm [*or*, All cheques shall be signed by at least two partners].

[(5) DURING vacations any senior clerk may be appointed by the partners to sign and draw cheques on behalf of the firm against the firm's account.

(6) ALL money belonging to any client, and entrusted to the firm for investment or other application, shall be placed to the credit of the firm on a separate account (hereinafter called the clients' account).

(7) ALL cheques drawn against the clients' account shall be signed by at least one partner.

(8) WHENEVER practicable and convenient, a client's money shall be placed on deposit and the interest thereon shall be accounted for to the client.(*l*)]

SECTION V.

Drawings of Profits.

No. 32.
Annual drawings subject to banking balance being sufficient.

IMMEDIATELY after the signing of the annual account, as hereinafter provided, each partner may withdraw the sum appearing in such account to be due to him in respect of profits [save that if such drawings would reduce the firm's balance at their bankers below the said sum of £——, such drawings shall be proportionately reduced and the balance shall be withdrawn only when the state of the banking account shall be sufficient for that purpose].(*m*)

No. 33.
The like where part of the share

AFTER the signing of the annual account each partner may draw out his share of the profits as thereby appearing, save that

(*l*) Except in the case of a firm of solicitors sub-clauses (5)–(8) should be omitted.

(*m*) See last Form, sub-clause (3).

of profits of one partner is to be capitalised.

so long as any part of the said sum of £—— hereby agreed to be brought in as capital by the said —— shall remain unpaid, the said —— shall receive out of his share of profits for such year the sum of £—— only, and the surplus of his share shall remain in the said business until by this means the whole of the said sum of £—— shall have been brought in.(*n*)

No. 34.

Monthly drawings on account where each partner may withdraw the same amount.

EACH partner may, on the first day of each month, draw the monthly sum of £—— out of the firm's banking account on account of his share of profits for the current year, but if on taking any annual account it shall appear that the monthly sums drawn out by him exceed his share of profits he shall forthwith refund the excess.

No. 35.

The like where the partners withdraw different amounts.

EACH partner may, on the first day of each month, draw out of the firm's banking account on account of his share of profits for the current year, as to the said —— the monthly sum of £——, [as to the said —— the monthly sum of £——, as to the said —— the monthly sum of £——,] and as to the said —— the monthly sum of £——, and if the monthly sums drawn out by any partner in any one year shall exceed his share of profits for that year, as appearing by the annual account, the excess shall be forthwith repaid by him to the firm.

SECTION VI.

Accounts and Audit.

No. 36.

Books of account.(*o*)

PROPER books of account shall be kept by the partners, and entries made therein of all receipts and payments on behalf of the partnership business, and of all such other matters, transactions, and things as are usually written and entered in books of account kept by persons engaged in concerns of a similar nature [*or* in similar books of account].

No. 37.

Annual account.

ON the —— day of —— in every year or as soon thereafter as practicable a balance sheet shall be made out, showing the

(*n*) See Form No. 15, *supra*.

(*o*) The partnership books should be kept at the place of business; all partners may have access to and may inspect and copy them: P. Act, 1890, s. 24 (9); but these rights must not be used by a partner who has retired in any way so as to affect the firm prejudicially: *Trego* v. *Hunt* [1896], A. C. 7 65 L. J. Ch. 1.

A partner may appoint an agent to inspect the books on his behalf: *Bevan* v. *Webb* [1901], 2 Ch. 59; 70 L. J. Ch. 536; and see *Norey* v. *Keep* [1909], 1 Ch. 561; 78 L. J. Ch. 334.

assets and liabilities of the firm and what belongs and is due to each partner in respect of capital and share of profits, and the same shall be signed by each partner, and when so signed shall be conclusive, except that if a manifest error shall be discovered therein within three months after the signing thereof such error shall be rectified.

No. 38.
The like where partners are to have separate signed account books.

On the —— day of —— in every year during the continuance of the partnership a general account shall be taken up to that date of the stock-in-trade, credits, property and assets, debts and liabilities of the partnership, and in taking such account a proper valuation shall be made of all items requiring valuation; and every such annual account shall be [entered in —— books, and] be signed [in each such book] by each partner, and after such signature each partner [shall keep one of the said books, and] shall be bound by such account, except that if any manifest error be found therein by a partner, and signified to the other or others within three months after the same shall have been so signed, such error shall be rectified.

No. 39.
Annual audit.

(1) Immediately after the taking of the annual account, the same shall be audited by a firm of chartered accountants.

(2) Messrs. ——, or such other firm as the partners shall from time to time appoint, shall be the auditors of the firm.

(3) Each partner shall comply with all the reasonable requirements of the auditors.

[(4) The audit shall extend to the clients' separate account and to any securities or property entrusted to the firm which may belong to any client.

(5) An extract from the auditor's report, so far as it affects any client, may be sent to such client.(*p*)]

Section VII.

Management and Prohibited Acts.

No. 40.
Partners to give whole time.

(1) Each partner shall, during the subsistence of the partnership, devote his whole time and attention to the partnership business, and no partner shall [subject as hereby expressly provided] (*q*) be engaged or concerned, whether directly or

(*p*) Sub-clauses (4) and (5) will only be used in the case of a firm of solicitors, see Form No. 31, *supra*.

(*q*) See Form No. 26, *supra*.

indirectly,(*r*) in any other business without the previous consent in writing of the other partner [or partners].

[(2) EACH partner shall in rotation attend at the partnership office on Saturday mornings [Bank holidays and Good Fridays], to transact any formal business of the firm during office hours.]

(3) EACH partner shall be entitled to take vacations of not more than —— weeks in the whole in each year.

(4) THE vacations shall be arranged so that at least one partner will remain to attend to the business of the firm.

(5) ABSTENTION from business by reason of illness shall not be reckoned as a vacation [unless the total abstention in any year extends over a period of at least —— weeks.]

No. 41.

Where one partner not to be bound to attend to business.

(1) THE said —— [and ——] shall devote the whole of his [their] time to the partnership business, and diligently employ himself [themselves] therein, and promote, to the utmost of his [their] power, the benefit and advantage thereof, but the said —— shall not be obliged to attend to the said business any further than he shall think proper, and may either actively engage in the said business or abstain wholly or partially from any active part therein as he shall from time to time think fit; but no partner shall, without the consent in writing of the other or others, engage or be concerned or interested directly or indirectly in any other business [except as hereby expressly provided to the contrary] and subject as aforesaid.

(2) (*Continue as in last Form.*)

No. 42.

Questions of management to be decided by majority.

ALL questions which may arise during the continuance of the partnership relating to or affecting the conduct or management of the partnership affairs (including the employment and dismissal of clerks and servants, the giving of credit, and the compounding of debts and claims) shall be decided (in case there shall be three or more partners for the time being) by the majority in number of the partners. [*Or*, shall be decided if the said —— and —— disagree in accordance with the views of the said ——.]

Variation where only two partners.

No. 43.

Where one partner is to

THE said —— shall have the sole management of the partnership business so far as regards matters of daily routine

Undertaking other business.

(*r*) Where the provision does not expressly prohibit engaging in any other business, but merely provides that partners shall give their whole time, an injunction will not be granted on a breach: *Whitwood Chemical Co.* v. *Hardman* [1891], 2 Ch. 416; 60 L. J. Ch. 428; *Metropolitan Electric Co.* v. *Ginder* [1901], 2 Ch. at p. 807; 70 L. J. Ch. 862.

and the engagement and dismissal of the office staff, but shall consult the other partners in regard to any matter of exceptional importance or any matter not within the ordinary scope of the partnership business. [So long as the said —— shall act in the sole management of the business he shall be paid out of the net profits of the business before division the yearly salary of £—— in addition to his share of profits.]

have the sole management as regards routine matters [with additional remuneration].

No partner shall, without the consent of the other partner [or partners], engage or (except for flagrant misconduct) discharge any clerk or other servant or agent of the firm.

No. 44. Engagement and dismissal of servants.

No partner shall [except as hereby expressly provided to the contrary], without the consent of the other partner [or partners], introduce any person into the firm, whether for the purpose of learning the partnership business as an apprentice or otherwise.(*s*)

No. 45. No person to be introduced for learning the business, &c.

No partner shall lend any money or deliver on credit any goods belonging to the firm to any person whom any other partner shall by notice in writing have forbidden him to trust, and if any partner shall do so, he shall make good to the other partner [or partners] all loss arising thereby.

No. 46. No partner to give credit if forbidden.

No partner shall release or compound any debt owing to or claim of the firm without the consent in writing of the other partner [or partners], and if any partner shall do so, he shall, at the request of the other partner [or partners], or any of them, pay to the firm the full amount of such debt or claim.

No. 47. No partner to release or compound debts, &c.

No partner shall, without the consent of the other partner [or partners], guarantee the payment or discharge of any sum or claim, whether by way of suretyship or otherwise [but such consent shall not be unreasonably withheld].

No. 48. No partner to give guarantees.

No partner shall, without the consent of the other partner [or partners], do any act or thing whereby the partnership assets [or his interest therein] shall become liable for any private debt or obligation [nor shall any partner, in transacting the partner-

No. 49. No partner to pledge the credit of the firm for private debts.(*t*)

(*s*) See *Highley* v. *Walker* (1910), 26 T. L. R. 685. Where there is power to introduce a son, this clause must be qualified as in square brackets. This clause should not be used in the case of a firm of solicitors, unless it is intended that articled clerks or students should be excluded.

(*t*) See P. Act, 1890, s. 33.

ship business, contract, without such consent as aforesaid, any partnership debt exceeding the sum of £—— in respect of any one transaction].

No. 50.
Partners not to deal with their shares.

No partner shall [except as hereby expressly provided to the contrary], without the consent in writing of the other partner [or partners], dispose of his interest in the partnership assets by way of sale or mortgage.

No. 51.
Just and faithful clause.(*u*)

THE partners shall be just and faithful to one another and shall furnish each other with full accounts and information with regard to all matters and transactions relating to the partnership business, and no partner shall do any act or thing whereby the firm or the partnership property may be prejudicially affected [and in particular no partner shall divulge any secret invention or process wherein the firm or any partner may have an interest or any other secrets of the firm].

SECTION VIII.

Introduction of Sons into the Firm.

No. 52.
Power for one partner to introduce a son into business.(*v*)

(1) THE said —— may at any time during the subsistence of the partnership give the whole or any part of his share in the said business, and the profits thereof, to any son of his [who may become a duly qualified ——], and may introduce such son into the firm to the extent of the share given to him as aforesaid, and in such case the introduced partner shall thenceforth during the residue of the period hereby fixed for the subsistence of the partnership carry on the said business in partnership with the said —— (*father*) and —— (*other partner*), or the said —— (*other partner*), as the case may be, for the residue of the said period, upon and subject to the like terms and conditions as are herein contained with regard to the partnership between the said —— (*father*) and —— (*other partner*), or as near thereto as circumstances will permit [save that the introduced partner shall be bound to devote the whole of his time to the said business, and diligently employ himself therein, and shall not have the

(*u*) See P. Act, 1890, s. 28.

(*v*) Where a partner has power to introduce a son into the business the other partners cannot object to his nomination if the nominee accepts: *Byrne* v. *Reid* [1902], 2 Ch. 735; 71 L. J. Ch. 830.

power hereby given to the said —— (*father*) of determining the said partnership by notice or of introducing a son into the business].

(2) THE introduced partner shall, at his own expense, and to the reasonable satisfaction of the other partners, execute a deed binding himself to comply with the aforesaid terms and conditions with such variations (if any) as the circumstances may render necessary.

No. 53.

Power for any partner to introduce a son by Will.

(1) ANY partner may by Will or codicil nominate one of his sons of full age to succeed on his death to his share of the partnership assets and the capital and future profits thereof, and the person so nominated shall [if and when he becomes a qualified ——] have the option of succeeding to the same share upon signifying such option to the surviving or other partner or partners within six months next after the death of the testator [or within —— months after he becomes qualified as aforesaid, which last happens], and the person succeeding as aforesaid shall be and become a partner in the firm in the place and in respect of the share of the testator upon the same terms and conditions and in the same manner as the testator, if living, would have been and remained a partner therein, or as near thereto as circumstances will permit, and he shall, if required so to do, execute a proper deed to the reasonable satisfaction of the other partners or partner, binding himself to observe the said terms and conditions accordingly. But if the person so nominated as aforesaid shall not signify his option to succeed to such share as aforesaid within six months after the death of the testator, then and in such case he shall be deemed to have declined to succeed thereto, and the nomination made by the Will of the testator shall be void.

Option may be given successively.

(2) THE said option may be given to any sons of the testator in succession, provided that the same shall either be refused or accepted within the time aforesaid.

[(2A) IN case no person so nominated shall be qualified as aforesaid within eighteen months from the death of the testator, the nomination shall be void.]

If nominee takes no active part in management, allowance to be made to other partners.

(3) IF any person admitted into the partnership under the foregoing provision shall be unable or unwilling to take an active part in the management of the business, then and in either of such cases the other partner or partners may take upon himself or themselves the entire management of the said business, and in such case such annual sum shall be allowed to the last

mentioned partner or partners for his or their additional trouble out of the share of the admitted partner in the profits of the said business as shall be agreed between the partners, or (in case of difference) as shall be determined by arbitration under the provisions for that purpose hereinafter contained.

Ordinary provisions to apply if son does not succeed to a share.

(4) IF any partner dies without having nominated a son to be his successor as aforesaid or if the persons so nominated decline to succeed to his share as aforesaid, then and in any such case the share of the partner so dying shall, as from his death, be subject to the provisions as to sale and valuation hereinafter contained.

SECTION IX.

Dissolution, Retirement, and Expulsion.

No. 54.

Partnership not to be wholly dissolved by death, bankruptcy, lunacy, &c., of one partner; the other partners to have power of attorney.

(1) IF a partner dies or becomes bankrupt, the partnership shall be dissolved so far only as regards that partner.

(2) IF a partner suffers his share of the partnership property to be charged within the meaning of the Partnership Act, 1890, for his separate debt, the partnership may, at the option of the other partners, be dissolved so far as regards that partner only.

(3) IF the partnership shall be dissolved by the Court under section thirty-five of the said Act on account of the lunacy, incapacity, or misconduct of a partner, the dissolution shall take effect so far only as regards that partner unless the Court shall otherwise determine.

(4) IF a partner retires or is expelled from the partnership under any power herein contained, the partnership shall be dissolved so far only as regards that partner.

(5) IN any such case where the outgoing partner is living, he shall retire from any trust for sale or other trust affecting the partnership property, and for the purposes of the Trustee Act, 1925, the other partner or partners shall have power by deed to remove him from the trusteeship.

(6) IN each of the aforesaid cases the outgoing partner, in consideration of the covenants by the other partners herein contained, hereby irrevocably appoints the other partner [partners and each of them] and the persons deriving title under the last surviving or continuing partner, jointly and severally, to be his attorneys or attorney for the purpose of getting in and assuring the share or interest (whether legal or equitable) of the outgoing

partner in the partnership assets (including goodwill, if any) in manner hereinafter provided, and of getting in and compelling payment of any book or other debts of the firm, and of giving notice to the customers or clients of the firm of the change in the firm, including the usual notice in the *London Gazette*, and for the purposes aforesaid the attorneys or attorney, in his name and on his behalf and as his act and deed or otherwise, may sign, seal, deliver, execute, or give any appointment of new trustees, conveyance, assignment, receipt, release, covenant, or other disposition, notice, advertisement, or other instrument.(*w*)

Application of the purchase-money of the share of the outgoing partner.

(7) In every such case as aforesaid all purchase-money or other consideration attributable to the share of the outgoing partner shall ultimately be accounted for to the representatives, trustee in bankruptcy, committee or receiver in lunacy, or to the outgoing partner as the case may require, but no purchaser or other persons dealing in good faith for money or money's worth with the said attorneys or attorney shall be concerned to see as to the application of such purchase-money or consideration.

No. 55.

Power for any partner to determine partnership if no profits made.

If upon taking the annual account it shall appear that the partnership business has not been carried on during the then preceding year so as to produce a profit, after allowing to each partner interest at the rate of £5 per cent. per annum on the amount of his capital for the time being in the business, any partner may at any time within one month from the time of taking the account give notice in writing to the other partners of his desire that the partnership shall determine, and in such case the partnership shall determine immediately upon the service of such notice :

Provided, that if the annual account for any year shall not be signed by the partners before the —— day of —— in that year, the question whether or not the business has in that year produced profits, after allowing interest as aforesaid, shall be referred to a chartered accountant as a single arbitrator under the provisions of the Arbitration Act, 1889 ; and if the arbitrator shall find that the business has not produced profits, after allowing interest as aforesaid, then the notice to determine the partnership may be served at any time within one month after the date of such finding.

Irrevocable power of attorney.

(*w*) If this form is not used the irrevocable power of attorney can be added later if required. If desired, separate persons may be named as attorneys.

No. 56.

Power for a partner to retire by giving notice.

(1) IF any partner shall be desirous of retiring from the firm at the end of the —— or any subsequent year of the partnership term and shall give to the other [partners] partner at least six months' notice (expiring on or before the day fixed for taking the annual account) to that effect, then the partnership shall, as regards only the partner giving such notice, determine as from such account day.

(2) THE power of attorney hereinbefore conferred shall apply in any such case and be exercisable immediately after the said account day.

No. 57.

Power to expel partner in certain events.(*x*)

(1) IN any of the following cases, namely—

(i) any partner shall make, draw, accept, or endorse any bill of exchange or promissory note, or give any security in the name of the firm (except on account of the partnership business, while carrying on the same in good faith), or

(ii) shall suffer his share of the partnership property to be charged within the meaning of the Partnership Act, 1890, for his separate debt,(*y*) or

(iii) shall fail to account for money received by him in respect of any partnership transaction after being required so to do by the other partners or any of them, or

(iv) shall act in other respects contrary to the good faith which ought to be observed between partners, or

(v) shall become incapable or unfit by reason of lunacy or otherwise to take his part in the management of the partnership business:

then, and in any of such cases, the other partner [or partners] may, by notice in writing given to him or (in the case of lunacy or unfitness) to his committee or receiver in lunacy, expel him from the partnership as from the date of the service of the notice, but so that if the expulsion shall be on account of any breach of duty the notice shall be given within three months after the discovery thereof:

Grounds for dissolution.

(*x*) Where a partner gives notice of dissolution under such a power as given in the text, the notice is valid though it does not specify the cause of complaint: *Green* v. *Howell* [1910], 1 Ch. 495; 79 L. J. Ch. 549. A power to expel a partner for scandalous conduct detrimental to the business was held exercisable where a partner was convicted for travelling without a railway ticket: *Carmichael* v. *Evans* [1904], 1 Ch. 486; 73 L. J. Ch. 329. Again, where the power extends to professional misconduct and a partner is a party to self-puffing advertisements he may be expelled: *Clifford* v. *Timms* [1908], A. C. 12; 77 L. J. Ch. 91.

(*y*) See s. 33 (2). Where a partner mortgages his share the mortgagees are entitled to an account on dissolution: s. 31 (2); *Bonnin* v. *Neame* [1910], 1 Ch. 732; 79 L. J. Ch. 388.

(2) If any question shall arise whether a case has happened to authorise the exercise of this power, such question shall be referred to arbitration under the power for that purpose hereinafter contained [and if the matter is decided in favour of the outgoing partner the notice of expulsion shall remain valid, but he shall be awarded damages against the other partners].

(3) In each of the aforesaid cases the outgoing partner, in consideration, &c. (*continue power of attorney as in Form No.* 54, *p.* 480, *if not already given in a preceding clause, and provide for the partner retiring from trusts of the partnership property, see same Form, sub-clause* (5)).

[*Or* (3) The power of attorney hereinbefore conferred shall apply in any such case.]

No. 58.

Outgoing partner not to practise or carry on business within a certain area.(z)

(1) No partner who retires or is otherwise discharged from the firm under any of the provisions hereof, or under any order of the Court, or under the general law, shall—

(i) at any time [within 10 years] after his retirement or discharge practise as a —— (*solicitor, or physician, surgeon or apothecary, &c.*), or

(ii) carry on or be concerned or interested,(*a*) either directly or indirectly, as principal, agent, director, manager, partner, shareholder, or otherwise, in any business of a nature which might in any way compete with any business for the time being carried on by the firm, within a radius of —— miles from ——,(*b*) or

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Covenant not to practise within a certain area.

(*z*) A covenant not to practise within a given area may not be broken where the covenantor practises within the prohibited area but in such a way that the covenantor suffers no damage: *Sewell* v. *Wright* (1906), 50 Sol. J. 223. Acting as manager to another firm within the district constitutes a breach of the covenant: *Robertson* v. *Willmott* (1909), 25 T. L. R. 681. Any covenantee may sue for breach: *Palmer* v. *Mallet* (1887), 36 Ch. D. 411; 57 L. J. Ch. 226; *Hepworth Manufacturing Co.* v. *Ryott* [1920], 1 Ch. 1; 89 L. J. Ch. 69; *Hadsley* v. *Dayer Smith* [1914], A. C. 979; 83 L. J. Ch. 770; *Millers Ld.* v. *Steedman* [1915], 84 L. J. K. B. 2057; *Nevanas* v. *Walker & Foreman* [1914], 1 Ch. 413; 83 L. J. Ch. 380.

Not to be interested in a business.

(*a*) A covenant not to be "interested" in a business in a given area does not prevent the covenantor from becoming a servant at a fixed salary in a similar business: *Gophir Diamond Co.* v. *Wood* [1902], 1 Ch. 950; 71 L. J. Ch. 550; and see *Pearks* v. *Cullen* (1912), 28 T. L. R. 371. The covenant may not prevent the wife of the covenantor from carrying on business within the area: *Smith* v. *Hancock* [1894], 2 Ch. 377; 63 L. J. Ch. 477; where a firm comprises several businesses, see *Cory* v. *Harrison* [1906], A. C. 274; 75 L. J. Ch. 714; *Caribonum Co.* v. *Le Couch*, 109 L. T. 587.

What are breaches.

(*b*) A breach is not committed if clients living within the radius are seen in an office outside it: *Woodbridge* v. *Bellamy* [1911], 1 Ch. 326; 80 L. J.

(iii) solicit any client [customer, *or* patient] of the firm.(*c*)

(2) IF he commits a breach of any of the foregoing provisions he shall pay to the other partners the sum of £—— for every month or part of a month during which he so practises or carries on or is concerned with any such business by way of liquidated damages, and a further sum of £—— for every client [customer, *or* patient] solicited by him or by any person on his behalf.

(3) A COVENANT to the effect aforesaid shall (if the continuing partners so require) be inserted in any deed of dissolution or other instrument executed in connexion with such retirement or discharge.(*d*)

No. 59.

Upon death, bankruptcy, lunacy, &c., of a partner, continuing partners to purchase his share or dissolve the firm.

(1) UPON the death of any partner, or upon any person ceasing to be a partner, the share of such deceased or outgoing partner in the partnership business, including his capital therein and in the stock-in-trade and assets thereof, shall, as from the time of his death or his ceasing to be a partner, be purchased by and belong to the remaining [partners or] partner, and if more than one in equal shares [*or*, in shares proportionate to their then shares in the business], and [they or] he shall take upon [themselves or] himself all the partnership debts and liabilities as from the same date, and the partnership shall be continued between the remaining partners, if more than one, under the provisions of these articles.

[(2) PROVIDED that if the surviving or continuing [partners or] partner shall, within six months from the death of the late partner or the time when the outgoing partner shall cease to be a partner, give to his personal representatives, trustee in bankruptcy, or committee or receiver in lunacy, or to the outgoing partner himself (as the case may require) notice in writing stating the intention of the surviving or continuing [partners or] partner to wind up the partnership affairs, instead of purchasing the share of the late or outgoing partner as aforesaid, then and in such case the partnership affairs shall be wound up as if the partnership had, at the date of the death of

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Ch. 265; and see *Freeman* v. *Fox* (1911), 55 Sol. J. 650, and *cf. Dayer-Smith* v. *Hadsley* (1913), 57 Sol. J. 555. The area must be restricted, see *Beetham* v. *Fraser* (1904), 21 T. L. R. 8; also *Stuart* v. *Halstead* (1911), 55 Sol. J. 598; *Mason* v. *Provident Clothing & Supply Co.* [1913], A. C. 724; 82 L. J. K. B. 1153.

(*c*) *Konski* v. *Peet* [1915], 1 Ch. 530; 84 L. J. Ch. 513.

(*d*) A verbal agreement is not sufficient, see *Reeve* v. *Jennings* [1910], 2 K. B. 522; 79 L. J. K. B. 1137.

the late partner, or at the time when the outgoing partner ceased to be a partner, determined by effluxion of time.]

[(3) THIS clause shall take effect subject and without prejudice to any valid exercise by the late partner of his testamentary power to nominate a son to succeed to his share.]

(4) THE foregoing powers of attorney shall apply in any of the cases aforesaid.

No. 60.

Option for continuing partners to purchase share of deceased or outgoing partner.

(1) IN any of the following cases, namely—

(i) if the partnership shall be dissolved by the death or bankruptcy of a partner, or

(ii) by reason of his having suffered his share to be charged within the meaning of the Partnership Act, 1890,(*e*) for his separate debt, or

(iii) shall be dissolved by the Court under section thirty-five of the said Act on account of the lunacy, incapacity, unfitness or misconduct of a partner, or

(iv) if any person shall otherwise cease to be a partner under any provision herein contained,

then, and in any of such cases, the other [partners or] partner may purchase the share of the deceased or outgoing partner in the partnership assets, including his capital, upon giving to his personal representative, trustee in bankruptcy, or committee or receiver in lunacy, or to the outgoing partner himself (as the case may require), a notice in writing to that effect at any time within three months from the time of his death or his ceasing to be a partner, and the purchase shall take effect and relate back to the same time, and the other [partners or] partner exercising such option shall be exclusively liable for the partnership debts and liabilities from the same time, and the purchased share shall be taken by them (if more than one) in shares proportionate to their then shares in the business.(*f*)

(2) IF the said option is not exercised within the time aforesaid, the partnership business shall be wound up as if the partnership had at the date of death or cesser determined by effluxion of time.

[(3) THIS clause, &c. (*continue as in last Form*).]

(4) THE foregoing powers of attorney shall apply in any of the cases aforesaid.

(*e*) See s. 33 (2).

(*f*) See *Kelsey* v. *K.* (1922), 91 L. J. Ch. 382. A land charge may be registered to protect an option to purchase a legal estate in land: L. P. Act, 1925, s. 2 (3) (iv), (5) (*d*); L. C. Act, 1925, s. 10, Class C (iv). Land charge.

No. 61.

Provision for ascertaining purchase-money for share of deceased or outgoing partner by valuation.(*g*)

(1) THE purchase-money for the share of a deceased or outgoing partner shall be the net value thereof after providing for the debts and liabilities of the firm on the day on which the purchase takes effect, and in estimating such value the goodwill of the business shall [not] be taken into account.

(2) IF the parties shall be unable to agree as to the value of the said share, the same shall be ascertained by two independent valuers, one to be appointed by the representatives, trustee in bankruptcy, committee or receiver in lunacy of the deceased or outgoing partner, or by the latter himself, as the case may require (hereinafter called the Vendor) and the other by the other [partners or] partner (hereinafter called the Purchaser) or by an umpire to be appointed by the two valuers before they proceed to business, and if the Vendor or Purchaser shall fail to appoint a valuer for fourteen days after being called on so to do by the other, or shall appoint a valuer who shall refuse to act, the valuer appointed by the other party shall make a final valuation alone.

(3) THE purchase-money so ascertained to be the value of the said share shall be paid by the Purchaser to the Vendor by four equal instalments at the expiration of six, twelve, eighteen, and twenty-four months respectively, from the day on which the purchase takes effect, with interest from that day on the instalments for the time being remaining unpaid at the rate of £6 per cent. per annum.

(4) THE Purchaser shall by deed covenant to pay the said instalments and interest and to keep the Vendor and the estate of the deceased or outgoing partner fully indemnified (*h*) against the debts and liabilities of the firm.

(5) THE Vendor shall, at the request and cost of the Purchaser, do and execute all acts, deeds, and things necessary or proper for vesting the share so purchased in the Purchaser and for enabling the Purchaser to get in the outstanding credits and assets of the firm.

Valuation.

(*g*) It is generally fairer to arrange for a valuation than to rely on the last annual account. If the Court enforces a power to purchase a share which is exercised, it will fix the valuation if necessary: *Dinham* v. *Bradford* (1869), L. R. 5 Ch. 519; and see *Hordern* v. *H.* [1910], A. C. 465; 80 L. J. P. C. 15. The goodwill must be taken into account unless the clause provides to the contrary.

(*h*) The purchaser of a partnership share must personally indemnify the vendor against the partnership liabilities: *Dodson* v. *Downey* [1901], 2 Ch. 620; 70 L. J. Ch. 854.

(6) THE powers of attorney hereinbefore conferred shall be exercisable by the Purchaser for giving effect to the provisions of this clause, including (if necessary) the appointment of a valuer on behalf of the Vendor.(*i*)

(7) THE purchase-money for any such share may, under the said powers of attorney or otherwise, be apportioned between any of the items purchased.

No. 62.

The like by reference to the last annual account.(*j*)

(1) THE purchase-money to be paid for the share of a deceased or outgoing partner to his representatives, or trustee in bankruptcy, committee or receiver in lunacy, or the outgoing partner himself, as the case may require (hereinafter called the Vendor), by the other [partners or] partner (hereinafter called the Purchaser) shall be as follows—

(i) If the deceased or outgoing partner shall have died or ceased to be a partner before the —— day of —— next (*the first annual account day*) then a sum equal to the capital brought in by him into the partnership as hereinbefore mentioned, with interest on such sum at the rate of £—— per cent. per annum from the commencement of the partnership until the day of his death or of his ceasing to be a partner as aforesaid, such interest to be in lieu of any share of profits during that period ;

(ii) If the deceased or outgoing partner shall have died or ceased to be a partner on an annual account day in any year, then such a sum as by the annual account shall be found to be the net amount or value of the said share on such account day ;

(iii) If the deceased or outgoing partner shall have died or ceased to be a partner on any day later than the —— day of —— next (*first annual account day*), and not being any subsequent annual account day, then such a sum as by the annual account shall be found to be the net amount or value of the said share on the account day (*k*) immediately preceding his death, or the day of his ceasing to be a partner as aforesaid, with interest on the same sum at the rate of £—— per cent. per annum from the same account day up to the day of his death or of his ceasing to be a partner as aforesaid, such interest to be in lieu of any share of profits during the same period.

(*i*) See Form No. 54, p. 480.

(*j*) This Form should be used in partnerships between persons in a profession, but not in the case of trading partnerships where the value of the stock-in-trade, &c., may vary to a large extent.

Goodwill.

(*k*) Unless goodwill is expressly mentioned, no allowance will be made in respect of it where the price of the retiring partner's share is based on the last annual profit and loss account : *Scott* v. *S.* (1904), 89 L. T. 582.

(2) THE interest payable under this clause in lieu of profits shall be paid on demand, and the purchase-money payable hereunder shall be paid by four equal instalments, at the expiration of six, twelve, eighteen and twenty-four months respectively from the death of the late partner or from the time of the outgoing partner ceasing to be a partner as aforesaid, with interest on the amount for the time being remaining unpaid at the rate of £6 per cent. per annum, computed from the same time.

(3) THE Purchaser shall by deed (*continue as in sub-clause* (4) *of last Form*).

(4) THE Vendor shall (*continue as in sub-clause* (5) *of last Form*).

(5) THE powers of attorney hereinbefore conferred shall be exercisable by the Purchaser for giving effect to the provisions of this clause.(*l*)

(6) THE purchase-money, &c. (*continue as in sub-clause* (7) *of last Form*).

No. 63.

On final determination of partnership, leaving one partner, goodwill to be paid for.

(1) IF the partnership shall be wholly determined (whether by reason of the death, bankruptcy, lunacy, retirement, or other discharge of a partner), leaving one other partner only, such other partner shall, within twelve months after such death or discharge, pay to the representatives, trustee in bankruptcy, committee or receiver in lunacy of the deceased or outgoing partner, or to the latter himself (as the case may be), as purchase-money for the share of the deceased or outgoing partner in the goodwill of the business, the sum of £——, with interest thereon, from the death or discharge until paid at the rate of £— per cent. per annum [in addition to any other purchase-money payable hereunder in respect of the same share in the other partnership assets] [*or*, a sum equal to the share of the deceased or outgoing partner in the net profits arising from the said business during the period of two years immediately preceding such death or discharge, with interest thereon, &c. (*continue as above*)].

(2) THE powers of attorney hereinbefore conferred shall be exercisable by the other partner for assigning the share in the goodwill and otherwise giving effect to the provisions of this clause.

(3) THIS clause shall not apply if the partnership expires by effluxion of time and is not continued as a partnership at will.

No. 64.

On final determination of

IF the partnership shall (otherwise than by reason of effluxion of time) be wholly determined (whether by reason of the death,

(*l*) See Form No. 54, p. 480.

bankruptcy, lunacy, retirement, or other discharge of a partner), leaving one other partner only, such partner may purchase the printed books, office furniture and fittings at a valuation to be made by a valuer nominated for the purpose by the President for the time being of the Institute of Surveyors, and the amount of such valuation shall be deemed to form part of the partnership assets, and shall be divided accordingly.

partnership, remaining partner to have power to purchase certain chattels at a valuation.(*m*)

No. 65.

Solicitor's papers to be handed over to any surviving or continuing partner.

On the death or other discharge of a partner, all deeds, documents, drafts of deeds and documents, and other papers belonging to clients or otherwise which shall be in the custody of the partners, or any of them, on account of the firm, shall (subject to the claims of the persons to whom the same shall belong) remain in the hands of or be delivered to the surviving or continuing [partners or] partner.

No. 66.

Provision for payment of annuity to widow [or family] of a deceased partner.(*n*)

(1) If any partner dies during the subsistence of the partnership, leaving a widow [or child, children, or more remote issue] surviving him, then the surviving or continuing partners or partner shall, during the residue of the said term of years fixed for the duration of the partnership, and if any of the surviving or continuing partners or partner, and also the widow [or child, children, or issue] of the deceased partner shall so long live, pay to the personal representatives of the deceased partner (in addition to any other money due to his estate under these articles) the yearly sum of £—— without any deductions, except for income tax, to commence from the death of the deceased partner and to accrue from day to day, but to be paid by equal quarterly payments, the first payment to be made at the end of three months from the death of the deceased partner.

(*m*) This clause does not extend to goodwill, hence the goodwill will belong to the partners in common after dissolution, and each can carry on business under the firm name : *Banks* v. *Gibson* (1865), 34 Beav. 566 ; 34 L. J. Ch. 591 ; and see *Re David and Matthews* [1899], 1 Ch. 378 ; 68 L. J. Ch. 185. Where wider words are used, *e.g.*, " property, stock, goods and effects, &c.," the goodwill will be deemed to be included : *Page* v. *Ratliffe* (1897), 76 L. T. 63. It is questionable whether goodwill in the common meaning of the word really exists in a professional partnership, but it exists in some form ; see *Burchell* v. *Wilde* [1900], 1 Ch. 551 ; 69 L. J. Ch. 314 ; also *Hills* v. *Fearis* [1905], 1 Ch. 466 ; 74 L. J. Ch. 237. Goodwill.

(*n*) This clause confers a right on the widow of the deceased partner and creates a trust in her favour : *Re Flavell* (1883), 25 Ch. D. 89 ; 53 L. J. Ch. 185. It is conceived that under Fin. (1909-10) Act, 1910, s. 74, the insertion of this Form will attract *ad valorem* stamp duty, and that the partnership deed should be so stamped on the value of the annuity. Stamp Duty.

(2) As between the surviving or continuing partners, such yearly sum shall be borne and paid in the proportions in which they may from time to time be entitled to participate in the profits of the business.

(3) After any person (except a last surviving or continuing partner) ceases to be a partner, he or his estate and effects shall cease to be liable for any part of the said yearly sum thereafter accruing, and the same shall be paid by the remaining partners.

No. 67. Statutory provisions for winding-up to apply, subject to express provisions.

(1) Subject and without prejudice to the express provisions of these articles, the provisions of section forty-four of the Partnership Act, 1890, shall apply in connexion with the winding up of the partnership.

(2) The powers of attorney hereinbefore conferred shall so far as practicable be exercisable for giving effect to the provisions of this clause.(*o*)

No. 68. Power to advertise dissolution.

Upon the death or other discharge of any partner, the other partners may advertise the dissolution of or change in the partnership as regards the deceased or outgoing partner in the *London Gazette* and elsewhere, and may sign the name of the outgoing partner in the notice of dissolution and in any notices sent to clients [customers, or patients] of the firm, and the foregoing irrevocable power of attorney shall apply accordingly.(*p*)

Section X.

Arbitration and Notices.

No. 69. Arbitration clause.

If, during the continuance of the partnership, or at any time thereafter, any difference shall arise between the partners, or their respective representatives, or any other persons interested under these Articles, as respects the construction of any of the provisions herein contained, or as respects any division, act, matter or thing to be made or done in pursuance hereof, or as respects the rights or liabilities of any party hereunder or the persons deriving title under him, or any other matter or thing relating to the firm or the affairs thereof, such difference shall be forthwith referred to two arbitrators, one to be appointed by each party in difference [*or*, to a single arbitrator] pursuant to the Arbitration Act, 1889.(*q*)

(*o*) See Form No. 54, p. 480. (*p*) Compare Form No. 54, p. 480.

(*q*) If one of the partners is given power to decide questions, this clause should be qualified by such words as "subject to the powers hereinbefore conferred on the said——"

No. 70.
The same ; a short form.

ALL matters in difference in relation to the partnership affairs shall be referred to two arbitrators, one to be appointed by each party and their umpire [*or*, to a single arbitrator] according to the provisions of the Arbitration Act, 1889.

No. 71.
Notices.(*r*)

THE provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to all notices to be given under these Articles, and any notice to be given by a partner to another partner or partners shall be deemed duly served if left at the place of business for the time being of the firm.

No. 72.
Marginal notes.

THE marginal notes to these Articles are for convenience of reference only, and shall not affect the construction thereof.

(*r*) This section applies to notices required to be served by any instrument affecting property executed or coming into operation after 1925, unless a contrary intention appears : sub-s. (5). Notices.

Part II.

PRECEDENTS OF PARTNERSHIP DEEDS.

No. I.

ARTICLES *of* Partnership *between* Traders.(*a*)

Parties and recitals.

THIS PARTNERSHIP DEED [is] made, &c., Between, &c. (*each intending partner should be made a party of a separate part; recitals of the title of any partner to any property to be included in the assets of the firm may be added if required*) :

Operative parts.

[NOW THIS DEED] WITNESSETH and it is hereby declared as follows :—

1. *Agreement for partnership—Form No.* 1, *p.* 462.

2. *Commencement and duration of partnership—Form No.* 2, 3, *or* 4, *p.* 462, *as required.*

3. *Name of firm—Form No.* 5, *p.* 463.

4. *Place of business and acquisition of land—Form No.* 6, 7, *or* 8, *pp.* 463–465, *as required.*

5. *Capital of firm—Forms Nos.* 9, 10, 11, 12, 13, 14, 15, 16, *or* 17, *pp.* 466–469, *as required.*

[6. *Certain chattels and goodwill to remain the property of one partner—Form No.* 18, *p.* 469, *if required.*]

7. *Interest on capital—Form No.* 19, *p.* 469.

[8. *Interest on loans—Form No.* 20, *p.* 470, *if required.*]

9. *Division of profits and losses—Forms Nos.* 21, 22, 23, 24, *or* 25, *pp.* 470–471, *as required.*

[10. *Reserve fund— Form No.* 29 *or* 30, *pp.* 471–472, *if required, or insurance against negligence—No.* 30A, *p.* 472.]

11. *Banking account—Form No.* 31, *p.* 473, *using sub-clauses* (1), (2) *and* (4) *only.*

(*a*) As articles of partnership vary so much according to the circumstances of each case, it seems useless to give a simple precedent without reference to forms.

12. *Annual drawings of profits—Form No.* 32 *or* 33, *p.* 473.

13. *Monthly drawings on account—Form No.* 34 *or* 35, *p.* 474.

14. *Books of account—Form No.* 36, *p.* 474.

15. *Annual account—Form No.* 37 *or* 38, *pp.* 474–475.

[16. *Annual audit—Form No.* 39, *p.* 475, *if required, omitting sub-clauses* (4) *and* (5).]

17. *Time to be given to business—Form No.* 40 *or* 41, *pp.* 475-476.

18. *Management, with or without further remuneration—Form No.* 42 *or* 43, *p.* 476.

19. *Engagement and dismissal of servants—Form No.* 44, *p.* 477.

[20. *Negation of apprenticeships—Form No.* 45, *p.* 477, *if required.*]

21–25. *Restrictions on acts of partners—Forms Nos.* 46–50, *pp.* 477–478.

26. *Just and faithful clause—Form No.* 51, *p.* 478.

27. *Power to introduce son—Form No.* 52 *or* 53, *pp.* 478–479.

28. *Partnership not to be wholly dissolved by death, bankruptcy, &c., and irrevocable power of attorney—Form No.* 54, *p.* 480.

[29. *Power to determine if no profits—Form No.* 55, *p.* 481, *if required.*]

[30. *Power for partner to give notice of retirement—Form No.* 56, *p.* 482, *if required.*]

[31. *Power to expel partner in certain events—Form No.* 57, *p.* 482, *if desired.*]

32. *Outgoing partner not to carry on business within certain area—Form No.* 58, *p.* 483, *omitting the inapplicable words.*

33. *Purchase of share of deceased or outgoing partner—Form No.* 59 *or* 60, *pp.* 484–485.

34. *Provision for ascertaining purchase-money—Form No.* 61 *or* 62, *pp.* 486–487.

[35. *Goodwill to be paid for by surviving partner—Form No.* 63, *p.* 488, *if required.*]

[36. *Provision for payment of annuity to widow or family of deceased partner—Form No.* 66, *p.* 489, *if required.*]

37. *Application of statutory provisions to winding up—Form No.* 67, *p.* 490.

38. *Power to advertise dissolution—Form No.* 68, *p.* 490.

39. *Arbitration clause—Form No.* 69 *or* 70, *pp.* 490–491.

40. *Notices—Form No.* 71, *p.* 491.

41. *Marginal notes—Form No.* 72, *p.* 491.

IN WITNESS, &c.

No. II.

ARTICLES *of* PARTNERSHIP *between* TRADERS *where a* NEW PARTNER *is introduced.*(*b*)

Parties.

THIS PARTNERSHIP DEED is made, &c., BETWEEN A. B., of, &c. (*one partner*), of the 1st part, C. D., of, &c. (*other partner*), of the 2nd part, and E. F., of, &c. (*new partner*), of the 3rd part: WHEREAS:—

Recitals. Agreement by present partners to take in a new one.

(1) The said A. B. and C. D. have for some time past carried on the business of —— at ——, and they have agreed with the said E. F. to take him into the said business as from the —— day of —— last:

Particulars of property and assets of present partners.

(2) On the —— day of —— last the property and assets of the said A. B. and C. D. as such partners as aforesaid consisted of: First, the freehold and leasehold properties mentioned in the first part of the Schedule hereto, subject to the incumbrances affecting the same mentioned in the second part of that Schedule, and which freehold and leasehold properties, after deducting the amount of the said incumbrances, have been valued at £——; Secondly, the stock-in-trade, furniture, and effects in the nature of personal chattels, an inventory whereof has been furnished to the said E. F., and which are valued at £——; And Thirdly, the book debts owing to the said A. B. and C. D., and which book debts, after allowing for bad or doubtful ones, are estimated at £——:

Amount of liabilities.

(3) The liabilities of the said A. B. and C. D. as such partners as aforesaid (other than the incumbrances mentioned in the Schedule hereto) amount to £—— or thereabouts:

Agreement that incoming partner should purchase a share of freehold and leasehold property and stock-in-trade.

(4) It was part of the arrangement between the parties hereto that the said E. F. should purchase from the said A. B. and C. D. one —— share in the net proceeds of sale of said freehold and leasehold properties, subject to a proportionate part of the incumbrances affecting the same, for the sum of £——, and one —— share in the said stock-in-trade, furniture and effects in the nature of personal chattels for the sum of £——, so that the same might be brought by him into the new partnership: [And it was also part of the said arrangement that the book debts owing to the said A. B. and C. D. should become part of the property of the new firm, and that the said E. F. should pay

Book debts; Stamp.

(*b*) This deed will require a common deed stamp, unless the book debts of the old firm are to be taken by the new firm, in which case it is apprehended that the deed will also have to bear an *ad valorem* stamp on the sum paid by the new partner for his share in the book debts so taken over.

to them the sum of £——, being one —— share in the estimated amount thereof]:

(5) In part pursuance of the said agreement the said E. F. has before the execution of this deed paid or secured the payment to the said A. B. and C. D. of the said sums of £——, [£——,] and £——, making together £——: Payment of purchase-money.

(6) By a Conveyance bearing even date herewith, and made between, &c. (*see next Precedent*), the said freehold and leasehold properties have been conveyed and assigned so as to become vested in the said A. B., C. D. and E. F. (hereinafter together called the Partners) on trust for sale (as part of the property of the new partnership), but subject to the incumbrances affecting the same: Conveyance of freehold and leasehold property so as to vest in new firm.

(7) In further pursuance of the said agreement, the said stock-in-trade, furniture and effects in the nature of personal chattels have been delivered to the partners and they have taken possession thereof: Delivery of personal chattels.

NOW THIS DEED WITNESSETH and it is hereby declared as follows:— Operative parts.

1. *Agreement for partnership—Form No.* 1, *p.* 462, *referring to* "the Partners."

2. *Commencement and duration of partnership—Form No.* 2, 3, *or* 4, *p.* 462, *as required.*

3. *Name of firm—Form No.* 5, *p.* 463.

4. *Place of business—Form No.* 6 *or* 8, *pp.* 463, 465, *as required.*

5. (1) THE said freehold and leasehold properties or the proceeds of sale thereof and the said stock-in-trade, furniture and effects in the nature of personal chattels, late the property of the said A. B. and C. D. [and the book debts owing to the said A. B. and C. D.], shall be the property of the new firm. Capital of the firm.

(2) THE said A. B. shall be credited in the partnership books with the sum of £—— (being —— shares in the net value of the said property) as so much capital brought in by him.

(3) THE said C. D. shall be credited with a like sum of £—— (being —— other shares therein) as so much capital brought in by him.

(4) AND the said E. F. shall be credited with the sum of £—— (being the remaining —— shares therein) as so much capital brought in by him.

6. [THE book debts owing to the old firm of A. B. and C. D. shall be received by them for their own use, and they shall thereout or otherwise] pay and satisfy all the debts and liabilities Book debts and liabilities.

of the old firm other than the incumbrances mentioned in the Schedule hereto, and shall keep indemnified therefrom all the property of the new firm.(*c*)

7. *Interest on capital—Form No.* 19, *p.* 469 (*continue the rest of the Precedent as in Prec. I, p.* 492).

IN WITNESS, &c.

THE SCHEDULE.

First Part.

Particulars of freehold and leasehold properties conveyed by deed of even date on trust for sale.

Second Part.

Particulars of incumbrances affecting the said properties.

No. III.

CONVEYANCE *by the* OLD PARTNERS *in a* BUSINESS *to* THEMSELVES *and a* NEW PARTNER *of the* FREEHOLD *and* LEASEHOLD *property of the* FIRM.(*d*) (*Legal Estate.*)

Parties.

THIS CONVEYANCE is made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Original Partners), of the one part, and E. F., of, &c. (hereinafter called the New Partner), of the other part: WHEREAS:—

Agreement by old partners to admit new partner to a share.

(1) The Original Partners have for some time carried on the business of —— in partnership under the style of —— & Co., and they have agreed to admit the New Partner into partnership on the terms (among other things) that the New Partner should be entitled to one —— share in the profits thereof:

That freehold and leasehold property in Schedule belong to old partners, subject to incumbrances

(2) The freehold and leasehold properties mentioned in the first part of the Schedule hereto are part of the partnership property of the Original Partners, and are vested in them as joint tenants on trust for sale (they being absolutely entitled to the net proceeds of sale in equal shares [*or otherwise as the case may be*]), subject to the incumbrances mentioned in the second part of that Schedule, whereon the aggregate principal

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Variation if book debts taken over by the new firm.

(*c*) If the book debts are taken over by the new firm, Article 6 will be omitted, and the article will stand thus: The partners shall pay and satisfy all the debts and liabilities of the old firm in the same proportions as if they had been incurred by the new firm.

(*d*) This deed will bear an *ad valorem* stamp for the sum paid by the new partner *plus* his share in the amount of the incumbrances. This Prec. could be made to take effect as an appointment of an additional trustee, *cf.* Prec. XVI, p. 519.

sum of £—— is now owing, together with the sum of £—— in respect of the current interest thereon :

(3) It is part of the arrangement between the parties hereto (hereinafter together called the Partners) that the New Partner should purchase one —— share of the proceeds of sale of the said freehold and leasehold properties, subject to one —— share of the incumbrances affecting the same, for the sum of £——, and that the entirety of the said freehold and leasehold properties should be conveyed and assigned so as to vest in the Partners on trust for sale so that the net proceeds of sale and the rents and profits until sale should form part of the property of the new partnership or the income thereof in manner hereinafter appearing :

New partner to purchase share of property, and entirety to be conveyed to old and new partners.

NOW, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the New Partner to the Original Partners (the receipt of which sum the Original Partners hereby acknowledge), THIS DEED WITNESSETH and it is hereby declared as follows :—

1. THE Original Partners, As Trustees, do, and each of them as to his beneficial share in the net proceeds of sale, As Beneficial Owner, doth hereby convey and assign unto the Partners :

Conveyance of freeholds and leaseholds.(*e*)

FIRST, ALL AND SINGULAR the freehold properties described in the first part of the Schedule hereto and more particularly delineated on the plans numbered —— and —— hereto, and thereon edged ——,

Parcels.

AND SECONDLY, ALL AND SINGULAR the leasehold properties respectively comprised in or demised by the several Leases mentioned in the first part of the Schedule hereto :

Parcels.

TO HOLD unto the Partners as joint tenants as to the premises first described in fee simple, and as to the premises secondly described, for the respective residues of the terms granted by the said Leases, at the rents and subject to the lessee's covenants and conditions therein respectively reserved and contained, and as to such of the premises as are respectively affected thereby, subject to the incumbrances mentioned in the second part of the Schedule hereto, and so subject as to all the premises, UPON TRUST to sell the same (with full power to postpone the sale of the whole or any part thereof) and to stand possessed of the net proceeds of sale and any other capital money arising on

Habendum.

(*e*) If there are any enfranchised lands affected by manorial incidents these should be secondly described, the rights of the lord should be excepted out of the parcels, in the habendum the manorial incidents should be referred to and the deed should be produced to the steward within six months from date.

Enfranchised lands.

As to covenants for title with selves and another: L. P. Act, 1925, s. 81.

the exercise of any power applicable thereto (after payment of costs and subject to discharging incumbrances) and of the net rents and profits until sale (after payment of rents, rates, taxes, costs of insurance, repairs, mortgage interest and other outgoings), UPON THE TRUSTS requisite for giving effect to the respective rights and shares of the Partners and the persons respectively deriving title under them by virtue of any articles of partnership or otherwise.

As to payment of interest on incumbrances.

2. THE Original Partners shall pay all interest which may have accrued in respect of the incumbrances mentioned in the second part of the Schedule hereto up to the —— day of —— last (*the date of commencement of the new partnership*), and shall keep the New Partner and his estate and effects effectually indemnified therefrom.

Apportionment of incumbrances.(*f*)

3. WITHOUT prejudice to the rights and remedies of the respective incumbrancers and the enforcement thereof in such order and manner as they may respectively think fit, the assets and profits of the firm shall, after the said —— day of —— last, be primarily liable for the payment of all principal money and interest which may become payable in respect of the said incumbrances, and, subject as aforesaid, the said A. B. and his estate and effects shall be liable for —— shares thereof, the said C. D. and his estate and effects shall be liable for —— shares thereof, and the said E. F. and his estate and effects shall be liable for the remaining —— shares thereof.

Additional powers.

4. THE Partners, or the survivors or survivor of them, or the personal representatives of such survivor, or other the persons in whom the legal estates in the premises may (subject to subsisting incumbrances, if any) be vested on trust for sale as aforesaid, shall have and may exercise (in addition to the powers which by law are conferred on trustees for sale) the following powers, namely—

(i) Power to give effect to any transaction which, under the Settled Land Act, 1925, a tenant for life has power to transact with the consent of trustees, or with the leave of the Court, without the consent of any person or the leave of the Court;

(ii) Power to raise money under section seventy-one of that Act, for general purposes, free from any restrictions, and if thought fit by way of deposit of documents;

Notice to incumbrancers.

(*f*) Notice in writing of the conveyance and assignment of the rights of redemption must be given to the respective incumbrancers.

(iii) Power to execute further assurances under section sixty-six of the Law of Property Act, 1925, without the leave of the Court;

(iv) Power for each of them to grant powers of attorney under section twenty-five of the Trustee Act, 1925, free from the restrictions imposed by that section, and so that any such power may be made irrevocable for any period, not exceeding one year, and as if sub-sections (3), (4) and (5) had not been enacted.

PROVIDED that (save where a transaction is authorised by the concurrence of the persons interested in the proceeds of sale) the statutory requirements as to the number of trustees to give valid receipts for capital shall be complied with.(*g*)

[5. *If all the partners are not acting as trustees, a power may be reserved here to them, or the survivors, nominatim to appoint new trustees.*]

IN WITNESS, &c.

THE SCHEDULE.

First Part.

Freeholds.

1. ALL THAT, &c.
2. ALL THAT, &c.

Leaseholds.

Date of Lease.	Parties to Lease.	Property Demised.	Term.	Yearly Rent.
1.				
2.				

(*g*) The restriction imposed by L. P. Act, 1925, s. 27 (2), applies, notwithstanding anything to the contrary in the disposition on trust for sale, or in the instrument declaring the trusts of the proceeds; this does not prevent a trustee who is solely and beneficially entitled from dealing with the property as he thinks fit, nor prevent a sole trustee, with the concurrence of the persons interested, from carrying out any proper transaction. On the other hand, a purchaser will, under *ib.*, s. 42, object to a transaction being carried out with the concurrence of the persons (other than the trustee) interested in the proceeds of sale when it could be effected without such concurrence if there were two trustees for sale. To avoid joining persons interested it may be convenient to arrange for a Powers Deed to be executed.

Trustees to give receipts.

Concurrence of persons interested.

Powers deed.

The suggestion that the "statutory trusts" within L. P. Act, 1925, s. 35, are not affected by restriction as to the number of trustees to give receipts: *ib.*, s. 27 (2) (*cf.* T. Act, 1925, s. 14) cannot be accepted or acted on, the expression "arising under the disposition" in s. 27 (2) refers to the money arising on the sale or other transaction.

Trustees to give receipts.

Second Part.

Incumbrances affecting freeholds.

1. £——. Secured by Mortgage dated, &c., and made, &c., of the freehold property, numbered 1 in the first part of this Schedule [now vested in —— and ——], with interest at £— per cent. per annum payable on the —— day of —— and —— day of ——.
2. £——. Secured by a Legal Charge dated, &c.

Incumbrances affecting leaseholds.

1. £——. Secured by Mortgage by sub-demise dated, &c., made, &c., of the premises comprised in the lease, numbered ——, for the residue of the term thereby granted, less the last —— days thereof, with interest at the rate of £— per cent. per annum, payable on the —— day of —— and —— day of —— [now vested in —— and ——].
2. £——. Secured by a Legal Charge dated, &c.

No. IV.

ARTICLES *of* PARTNERSHIP *between* SOLICITORS.

Parties and recitals.

THIS PARTNERSHIP DEED [is] made, &c., BETWEEN, &c. (*each intending partner should be made a party of a separate part; recitals of the title of any partner to any property to be included in the assets of the firm may be added if required*).

Operative parts.

[NOW THIS DEED] WITNESSETH and it is hereby declared as follows :—

1. *Agreement for partnership—Form No.* 1, *p.* 462.

2. *Commencement and duration of partnership—Form No.* 2, 3, *or* 4, *p.* 462, *as required.*

3. *Name of firm—Form No.* 5, *p.* 463.

4. *Place of business and acquisition of land—Form No.* 6, 7, *or* 8, *pp.* 463–465, *as required.*

5. *Capital of firm—Form No.* 9, 10, 11, 16, *or* 17, *pp.* 466, 467, 469, *as required.*

[6. *Certain chattels and goodwill to remain the property of one partner—Form No.* 18, *p.* 469, *if required.*]

7. *Interest on capital—Form No.* 19, *p.* 469.

[8. *Interest on loans—Form No.* 20, *p.* 470, *if required.*]

9. *Division of profits and losses—Form No.* 21, 22, 23, 24, *or* 25, *pp.* 470–471.

[10. *Partner to be entitled to profits arising from a professional appointment—Form No.* 26, *p.* 471.]

11. *Partners not to account for legacies or gifts from clients—Form No.* 27, *p.* 471.

12. *Costs on loans to clients and out-of-pocket expenses of a partner—Form No.* 28, *p.* 471.

[13. *Reserve fund—Form No.* 29 *or* 30, *pp.* 471–472, *if required, or Insurance against negligence, No.* 30A, *p.* 472.]

14. *Firm's banking account; separate account of clients' money —Form No.* 31, *p.* 473.

15. *Annual drawings of profits—Form No.* 32 *or* 33, *p.* 473.

16. *Monthly drawings on account—Form No.* 34 *or* 35, *p.* 474.

17. *Books of account—Form No.* 36, *p.* 474.

18. *Annual account—Form No.* 37 *or* 38, *pp.* 474–475.

19. *Annual audit—Form No.* 39, *p.* 475.

20. *Time to be given to business—Form No.* 40 *or* 41, *pp.* 475–476.

21. *Questions of management—Form No.* 42, *p.* 476.

22. *Engagement and dismissal of clerks—Form No.* 44, *p.* 477.

23 to 27. *Restrictions on acts of partners—Forms Nos.* 46 *to* 50, *pp.* 477–478.

28. *Just and faithful clause—Form No.* 51, *p.* 478.

29. *Power to introduce son—Form No.* 52 *or* 53, *pp.* 478–479.

30. *Partnership not to be wholly dissolved by death, bankruptcy, &c., and irrevocable power of attorney—Form No.* 54, *p.* 480.

[31. *Power to determine if no profits—Form No.* 55, *p.* 481, *if required.*]

[32. *Power for partner to give notice of retirement—Form No.* 56, *p.* 482, *if required.*]

[33. *Power to expel partner in certain events—Form No.* 57, *p.* 482, *if desired.*]

[34. *Outgoing partner not to practise within a certain area—Form No.* 58, *p.* 483, *if required.*]

35. *Purchase of share of deceased or outgoing partner—Form No.* 59 *or* 60, *pp.* 484–485.

36. *Provision for ascertaining purchase-money—Form No.* 62, *p.* 487.

[37. *Goodwill to be paid for by surviving partner—Form No.* 63, *p.* 488, *if required.*]

38. *Power for surviving partner to purchase office effects at valuation—Form No.* 64, *p.* 488.

39. *Solicitor's papers to be handed over to surviving or continuing partner—Form No.* 65, *p.* 489.

[40. *Provision for payment of annuity to widow or family of deceased partner—Form No.* 66, *p.* 489, *if required.*]

41. *Application of statutory provisions as to winding up—Form No.* 67, *p.* 490.

42. *Power to advertise dissolution—Form No.* 68, *p.* 490.

43. *Arbitration clause—Form No.* 69 *or* 70, *pp.* 490–491. *If desired, the nominee of the President for the time being of the Law Society or Provincial Law Society may be made the sole arbitrator.*

44. *Notices—Form No.* 71, *p.* 491.

45. *Marginal notes—Form No.* 72, *p.* 491.

IN WITNESS, &c.

No. V.

ARTICLES *of* PARTNERSHIP *between* DOCTORS *or* SURGEONS *a premium being paid.*(*h*)

Parties. THIS PARTNERSHIP DEED is made, &c., BETWEEN A. B., of, &c., M.D., F.R.C.P. [*or* F.R.C.S.] (*one partner*), of the one part, and C. D., of, &c., M.B., L.R.C.P. (*other partner*), of the other part: WHEREAS:—

Appointments of partners. (1) The said A. B. has for some years past carried on the profession of a —— at —— and now holds the appointment of —— to the ——:

(2) The said C. D. has recently been appointed as —— at —— aforesaid:

Agreement to admit into partnership. (3) The said A. B. has agreed to admit the said C. D. into partnership, in consideration of the payment by the said C. D. to the said A. B. of the sum of £—— by way of premium, and also the sum of £——, being one —— share of the present agreed value of the [motors, motor accessories, horses, carriages, harness], surgical instruments, drugs, bottles, and other effects of the said A. B. provided by him for the purposes of his said profession, and upon the terms and according to the provisions hereinafter contained, and the said C. D. has accordingly paid

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Stamp. (*h*) This deed will require an *ad valorem* stamp, in respect of the premium, as well as a deed stamp. If the premium exceeds £500 it is conceived that the double duty imposed by the Fin. (1909-10) Act, 1910, s. 73, will be payable.

to the said A. B. the said sum of £—— on or before the execution of this Deed, as the said A. B. hereby acknowledges(*i*):

Operative parts.

NOW THIS DEED WITNESSETH and it is hereby declared as follows :—

1. *Agreement for partnership—Form No.* 1, *p.* 462.

2. *Commencement and duration of partnership—Form No.* 2, 3, *or* 4, *p.* 462, *as required.*

3. *Name of firm—Form No.* 5, *p.* 463.

4. *Place of business ; acquisition of land—Form No.* 6, 7, *or* 8, *pp.* 463–465, *as required.*

Chattels to become property of the firm.

5. THE [motors, motor accessories, horses, carriages, harness], surgical instruments, drugs, bottles, and other effects provided by the said A. B. for the purposes of his profession (one —— part of the value whereof has been paid for by the said C. D. as aforesaid) shall become and be the property of the firm.

6. *Each partner to be entitled to profits of his own appointment —Form No.* 26, *sub-clause* (1), *p.* 471 ; *continue division of profits —Form No.* 22, *p.* 470.

What to be considered profits.

7. THE salaries, remunerations, and other profits to arise from any appointments which may hereafter be accepted by the Partners, or either of them, and all premiums from pupils or apprentices, and all pecuniary presents and gratuities from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received from time to time by the Partners or either of them (except as hereinbefore expressly provided) shall be treated as profits of the firm, and be accounted for accordingly.

8. *Firm's banking account—Form No.* 31, *p.* 473, *omitting sub-clauses in square brackets.*

9. *Annual drawings—Form No.* 32, *p.* 473.

10. *Monthly drawings on account—Form No.* 35, *p.* 474.

11. *Books of account—Form No.* 36, *p.* 474.

12. *Annual account—Form No.* 37, *p.* 474.

13. *Partners to give whole time—Form No.* 40, *p.* 475, *omitting sub-clause* (2).

14 to 20. *Restrictions on acts of partners—Forms Nos.* 44 *to* 50, *pp.* 477–478.

21. *Just and faithful clause—Form No.* 51, *p.* 478.

22. *Power to introduce son when qualified—Form No.* 52 *or* 53, *pp.* 478–479.

(*i*) A recital of payment operates as a valid receipt.

Recital of payment.

23. *Power to give notice of retirement—Form No.* 56, *p.* 482.

24. *Power to expel partner in certain cases—Form No.* 57, *p.* 482.

25. *Outgoing partner not to practise within certain area—Form No.* 58, *p.* 483.

26. *Purchase of share of deceased or outgoing partner—Form No.* 59, *p.* 484; *add power of attorney, see Form No.* 54, *p.* 480, *unless given with Form No.* 57, *p.* 482.

27. *Provision for ascertaining purchase-money—Form No.* 62, *p.* 487.

28. *Goodwill to be paid for—Form No.* 63, *p.* 488.

29. *Provision for payment of annuity to widow or family of deceased partner—Form No.* 66, *p.* 489.

30. *Application of statutory provisions for winding up—Form No.* 67, *p.* 490.

31. *Power to advertise dissolution—Form No.* 68, *p.* 490.

32. *Arbitration clause—Form No.* 69 *or* 70, *pp.* 490–491. *If desired, the nominee of the President for the time being of the Royal College of Physicians or Surgeons may be made sole arbitrator.*

33. *Notices—Form No.* 71, *p.* 491.

[34. *If required add:* It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500.]

35. *Marginal notes—Form No.* 72, *p.* 491.

IN WITNESS, &c.

No. VI.

ADMISSION *of a* SON *of a* PARTNER *to a* PART *of his* FATHER'S SHARE *in the* BUSINESS, *pursuant to a power contained in the* ARTICLES *of* PARTNERSHIP.(*j*)

Parties.

THIS ADMISSION DEED is made, &c., BETWEEN A. B., of, &c. (*father*), of the 1st part, C. D., of, &c. (*the other partner*), of the 2nd part, and E. B., of, &c. (*son of A. B.*), of the 3rd part: WHEREAS:—

Articles of Partnership.

(1) By a Partnership Deed (hereinafter called the Principal Articles) dated, &c., and made between the said A. B., of the one part, and the said C. D., of the other part, the said A. B.

(*j*) It is conceived that under Fin. (1909-10) Act, 1910, s. 74, *ad valorem* stamp duty will be payable on the value of the share of capital assigned to the son.

and C. D. covenanted with each other to be partners in the business [profession] of ——, for the term of —— years, from the —— day of —— 19—, upon and subject to the provisions therein contained; and the Principal Articles contained a power for the said A. B., at any time while engaged in the said business, to introduce not more than one son of his [who should be qualified to act as ——], into the said firm as an acting partner, and to assign or otherwise make over to him the whole or any part of the share of the said A. B., in the assets of the partnership and the profits of the said business, and that in such case the son so introduced should become a partner in the said business as to the parts to be assigned to him as aforesaid for the residue of the said term upon and subject to the provisions of the Principal Articles, or as near thereto as circumstances would permit, and should enter into a covenant with the said A. B. and C. D., or with the said C. D. alone (as the case might require), to observe and perform the said provisions so far as the same ought to be observed and performed by the said E. B.:

Desire to admit.

(2) The said A. B. is desirous of introducing his son, the said E. B. [who is a duly qualified ——], into the said business as an acting partner, and to assign and make over to the said E. B. one —— of the share of the said A. B., in the stock-in-trade, money, credits, and other assets of the said partnership, and the profits of the said business:

Operative parts.

NOW THIS DEED WITNESSETH and it is hereby declared as follows:—

Admission of son to part of the share of the father.

1. THE said A. B., in exercise of the power for this purpose given to him by the Principal Articles and of all other powers, hereby introduces the said E. B. as an acting partner in the said firm.

Assignment of part of a share.(*k*)

2. IN further exercise of the said power the said A. B. hereby assigns unto the said E. B.,

ONE —— (*state the share to be assigned*) of the —— share[s] of the said A. B. in the [stock-in-trade,] money, credits, book debts, and other assets of the said partnership, and in the profits to arise from the said partnership business,

TO HOLD unto the said E. B. absolutely, subject to the proper proportion of the debts and liabilities of the said firm attributable to the premises hereby assigned.

(*k*) Any real estate or chattels real belonging to the firm should be separately conveyed; see Prec. III, p. 496, *supra*. Any variation in regard to the holding of capital can be effected in the Schedule, see Clause 4.

Separate conveyance.

Covenant by son to observe Partnership Articles.

3. IN consideration of the premises the said E. B. hereby covenants with the said A. B. and C. D., that the said E. B. will henceforth, during the remainder of the said partnership, remain and be a partner with the said A. B. and C. D. [or the survivor of them], in the said business, and will observe and perform the provisions of the Principal Articles [as varied by this Deed] so far as the same ought henceforth to be observed and performed by the said E. B., in respect of the —— share hereby assigned to him in the —— original share of the said A. B. in the said business, in the same manner in all respects as the said A. B. would have been bound to observe and perform the same under the provisions of the Principal Articles [as varied by this Deed].

Variation of the Principal Articles.

[4. THE Principal Articles shall henceforth be read and have effect—

(i) As if the various articles mentioned in the First Schedule hereto were varied as mentioned in that Schedule; and

(ii) As if the several clauses contained in the Second Schedule hereto were inserted in the Principal Articles.]

IN WITNESS, &c.

[*Add Schedules if required.*]

No. VII.

DEED *of* DISSOLUTION *of* PARTNERSHIP *between Outgoing and Continuing* PARTNERS; ASSIGNMENT *of the* OUTGOING PARTNER'S *interest in the* GOODWILL *and* STOCK-IN-TRADE *and* EFFECTS [*and* COVENANT *by him* NOT TO CARRY ON *similar* BUSINESS].(*l*)

Parties.

THIS DISSOLUTION DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Outgoing Partner), of the one part,

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Stamp duty.

(*l*) This deed will require an *ad valorem* duty of £1 per £100 on the whole sum paid to the retiring partner, *plus* the fraction of the liabilities taken over by the continuing partners, the transaction being in effect a sale: *Potter* v. *I. R. C.* (1854), 10 Ex. 147; 23 L. J. Ex. 345; *Christie* v. *I. R. C.* (1867), 2 Ex. 46; 36 L. J. Ex. 11; *Phillips* v. *I. R. C.* (1867), L. R. 2 Ex. 399; 36 L. J. Ex. 199; *Troup* v. *I. R. C.* (1891), 7 T. L. R. 610; Highmore, 4th ed., 161; Fin. (1909-10) Act, 1910, s. 73.

Irrevocable power of attorney.

If the articles confer an irrevocable power of attorney, this deed can, if required, be executed thereunder, and can be adapted to the case of the death, bankruptcy, lunacy, or expulsion of the outgoing partner; see note to Prec. XVI, p. 522. In such cases the power of attorney may not authorise the covenant as to trading to be inserted; see also Prec. XVII, p. 525.

C. D., of, &c., and E. F., of, &c. (hereinafter called the Continuing Partners), of the other part: WHEREAS:—

Partnership Articles.

(1) By a Partnership Deed (hereinafter called the Principal Articles) dated, &c., and made, &c., the Outgoing and Continuing Partners agreed to carry on the business of —— in partnership in equal shares, [*or*, the said A. B. being entitled to —— share of the assets and profits, the said C. D. to ——share, and the said E. F. to the remaining —— share] for the term of —— years, subject to the provisions contained in the Principal Articles, and they have carried on the said business accordingly up to the date hereof:

Account settled between partners.

(2) A statement and account has been this day settled between the parties hereto whereby it appears that the book debts and assets of the firm (including the goodwill of the business) are valued at £——, and that the liabilities of the firm amount to £——, which sum being deducted from the said sum of £—— leaves £—— as the net value of the business:

[Withdrawal of capital.]

[(2A) The Outgoing Partner has, on or before the execution of this Deed, with the consent of the Continuing Partners, withdrawn his capital from the business:]

Agreement that one partner shall retire upon certain terms.

(3) It has been agreed that the Outgoing Partner shall retire from the business, and that the Continuing Partners shall pay to the Outgoing Partner the sum of £——, being one (*his fraction*) share of the said sum of £—— (*net value*), for the purchase of his share in the business by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four months respectively, from the date hereof, with interest thereon or the instalments thereof for the time being remaining unpaid at the rate of £— per cent. per annum from the date hereof, and that the Continuing Partners shall give to the Outgoing Partner their joint and several covenants for securing the payment of the said sum of £—— by such instalments with interest as aforesaid, and also for indemnifying him against the liabilities of the firm:

Deed of covenant of even date.

(4) By a Deed bearing even date herewith the said C. D. and E. F. have given to the said A. B. their joint and several covenants aforesaid:(*m*)

Delivery of chattels.

(5) In further pursuance of the said agreement the Outgoing Partner has, before the execution hereof, delivered to the Continuing Partners all the stock-in-trade, furniture, and like

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(*m*) This deed of covenant will require a 10*s.* stamp only: Stamp Act, 1891, s. 56 (4). Stamp.

effects of the firm, consisting of all the personal chattels capable of passing by mere delivery, and the Continuing Partners are now in the exclusive possession thereof :(*n*)

NOW THIS DEED WITNESSETH and it is hereby declared as follows :—

Parties dissolve partnership.

1. THE parties hereto hereby dissolve the said partnership hitherto existing between them so far as regards the Outgoing Partner.

Continuing partners to continue business.

2. EACH of them, the Continuing Partners, hereby covenants with the other of them that they will henceforth be and remain partners in the said business in equal shares [*or*, the said C. D. to be entitled to —— share in the assets and profits thereof, and the said E. F. to the remaining —— share thereof] for the [residue of the said] term of —— years [from the date hereof] upon and subject to the conditions and provisions of the Principal Articles [as varied by this Deed].

Retiring partner assigns his share to other partners.

3. (1) IN further pursuance of the said agreement and in consideration of the premises, the Outgoing Partner, As Beneficial Owner, hereby assigns and releases unto the Continuing Partners,

ALL the share and interest of the Outgoing Partner in the said business and the goodwill thereof, and the money, credits, book debts,(*o*) and assets belonging thereto (other than the personal chattels which have been already delivered by him as aforesaid),

TO HOLD, unto the Continuing Partners absolutely in equal shares.

[*or*, TO HOLD, as to —— share of the premises unto the said C. D. absolutely and as to the remaining —— share of the premises unto the said E. F. absolutely, but subject in each case to a rateable proportion of the liabilities of the firm.]

[(2) IF the Outgoing Partner is a trustee for sale of any real estate or chattels real belonging to the said business (either alone or jointly with the Continuing Partners or either of them)

Chattels passing by delivery.

(*n*) See next Precedent. The personal chattels must be delivered to the continuing partners before the deed is signed to avoid stamp duty thereon; moreover, the deed might otherwise operate as a bill of sale and require registration.

Things in action; real estate and leaseholds.

(*o*) Notice in writing should be given to the debtor of the assignment of the book debts and other things in action. Any real estate and chattels real must be separately conveyed; see Prec. III, p. 496.

What are book debts.

Bills receivable and bonds are book debts, but not cash at bankers: *Re Stevens* [1888], W. N. 110, 116; *Re Haigh* (1907), 51 Sol. J. 343; a bill left at bankers and not actually discounted may be treated as a book debt: *Dawson* v. *Isle* [1906], 1 Ch. 633; 75 L. J. Ch. 338.

he shall forthwith retire from the trust, concur in any appointment of a new trustee or new trustees, and do all such other things as may be requisite for vesting the said real estate and chattels real in the Continuing Partners on trust for sale.]

Irrevocable power of attorney.

4. For the consideration aforesaid the Outgoing Partner, so far as regards his share hereby assigned or expressed so to be [and as regards any trust estate remaining vested in the Outgoing Partner, either solely or jointly as aforesaid], hereby irrevocably appoints the Continuing Partners and each of them, and the persons deriving title under them jointly and severally, to be the attorneys and attorney of the Outgoing Partner, to ask, demand, sue for, recover, and receive of and from all persons liable to pay or deliver the same, all the debts, sums of money, and effects due and owing or hereafter to become due or owing and belonging to the firm hereby dissolved, or expressed so to be, and on payment or delivery thereof to give valid receipts, releases, and discharges for the same respectively, and on non-payment or non-delivery thereof, or any part thereof, to institute and continue any actions or other proceedings whatsoever for recovering and compelling payment thereof, or to commute, compound, or submit to arbitration any claim in respect of the premises, and to execute any deed or other instrument, notice, or advertisement of dissolution [including any deed of retirement required for vesting any such trust property as aforesaid in the Continuing Partners], and for the purposes aforesaid, or any of them, to use the name of the Outgoing Partner, and to do and perform all acts and things in relation to the premises as fully and effectually as the Outgoing Partner might or could have done, whether the firm had been dissolved or not, if he were living and of full capacity.

Covenant by Retiring Partner not to carry on business within certain limits.

5. The Outgoing Partner hereby covenants with the Continuing Partners that the Outgoing Partner will not, during his life, either alone or jointly with, or as director [shareholder] or agent of or for any other person or corporation, and either directly or indirectly, carry on or be concerned or interested in, or assist any person or corporation (other than the Continuing Partners or any other subsequent partner in their firm or business), to carry on or be concerned or obtain any interest in the business of —— in the town of —— or within a radius of —— miles therefrom.

Mutual releases

6. For the consideration aforesaid, the Outgoing Partner hereby releases the Continuing Partners and each of them and

their respective estates and effects, and the Continuing Partners hereby jointly and severally release the Outgoing Partner and his estate and effects of and from all covenants and provisions of the Principal Articles, and from all proceedings, costs, claims, and demands whatsoever in relation to the affairs of the late firm.

Variation of the Principal Articles.

[7. THE Principal Articles shall, as regards the Continuing Partners and the persons respectively deriving title under them, henceforth be read and have effect—

(i) As if the various Articles mentioned in the First Schedule hereto were varied as mentioned in that Schedule; and

(ii) As if the several clauses contained in the Second Schedule hereto were inserted in the Principal Articles.]

IN WITNESS, &c.

[*Add Schedules if required.*]

No. VIII.

DEED *of* COVENANT *by Continuing* PARTNERS, *with Outgoing* PARTNER *to pay purchase-money and keep him indemnified.*(*p*)

Parties.

THIS DEED OF COVENANT is made, &c., BETWEEN C. D., of, &c., and E. F., of, &c. (hereinafter called the Continuing Partners), of the one part, and A. B., of, &c. (hereinafter called the Outgoing Partner), of the other part: WHEREAS:—

Articles of Partnership.

(1) By a Partnership Deed (hereinafter called the Principal Articles) dated, &c. (*recite Partnership Articles, as in last Precedent*):

Account settled.

(2) A statement (*continue as in last Precedent*):

[(2A) (*withdrawal of any capital as in last Precedent*):]

Agreement for Outgoing Partner to retire.

(3) It has been agreed (*continue as in last Precedent down to the words* "from the date hereof"):

Agreement to give covenants.

(4) It has been agreed that the Continuing Partners shall enter into the covenants hereinafter contained:

Deed of dissolution.

(5) By a Dissolution Deed bearing even date herewith, and made, &c. (*recite shortly last Precedent*):

NOW THIS DEED WITNESSETH as follows:—

Covenant to pay purchase-money by instalments.

1. (1) IN pursuance of the said agreement, and in consideration of the Dissolution Deed of even date herewith, the Continuing

(*p*) In some cases the purchase-money is secured by a mortgage of part of the partnership assets. The stamp will be 2*s.* 6*d.* for every £100 secured, and 10*s.* for the indemnity. For a form of Bond for a similar purpose given to executors, see Prec. V, Bonds, p. 408, *supra*.

Partners hereby jointly and severally covenant with the Outgoing Partner to pay to the Outgoing Partner the said sum of £——, with interest thereon, or on so much thereof as for the time being remains unpaid from the date hereof at the rate of £—— per cent. per annum by half-yearly payments on the —— day of —— and the —— day of —— in every year :

(2) PROVIDED, that the said principal sum of £—— shall be payable by the following instalments (namely)—

(i) As to the sum of £—— (part thereof) on the —— day of —— next ;

(ii) As to the further sum of £—— (part thereof) on the —— day of ——, 19— ;

(iii) As to the further sum of £—— (part thereof) on the —— day of ——, 19— ;

(iv) And as to the further sum of £—— (residue thereof) on the —— day of ——, 19— :

(3) PROVIDED ALSO, that all interest on any instalment hereby secured which may have accrued at the time of payment of that instalment shall be paid at the same time as the instalment,(*q*) together with any arrears of interest on the other principal money down to the last half-yearly day fixed for payment of interest.

Covenant for indemnity.

2. FOR the consideration aforesaid the Continuing Partners hereby jointly and severally covenant with the Outgoing Partner that the Continuing Partners and their respective estates and effects will at all times hereafter save harmless and keep indemnified the Outgoing Partner and his estate and effects from and against all debts and liabilities whatsoever of the said firm, and from all proceedings, costs, claims, and demands in respect thereof.

[Apportionment of liabilities between the Continuing Partners.]

[3. WITHOUT prejudice to the rights and remedies of the Outgoing Partner hereunder and the enforcement thereof in such order and manner as he may think fit, the said C. D. and his estate and effects shall be primarily liable for the payment or discharge of —— share of the said principal money, interest, and liabilities, and the said E. F. and his estate and effects shall be primarily liable for the payment or discharge of the remaining —— share thereof.]

IN WITNESS, &c.

(*q*) If desired, a higher rate of interest may be covenanted to be paid, and a proviso added for reducing the rate on punctual payment : see Forms in Mortgages, *supra*.

No. IX.

AGREEMENT *for* DISSOLUTION *of* PARTNERSHIP, *where the* PARTNERSHIP PROPERTY *consists wholly of* CHATTELS *and* BOOK DEBTS, *and Book Debts are* NOT *taken over by* CONTINUING PARTNERS, *and* NOTHING *is paid for* GOODWILL.(*r*)

Parties. THIS DISSOLUTION AGREEMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Outgoing Partner), of the one part, and C. D., of, &c., and E. F., of, &c. (hereinafter called the Continuing Partners), of the other part: WHEREAS:—

Agreement for dissolution. (1) The parties hereto have agreed to dissolve the partnership hereinafter mentioned on the terms hereinafter appearing:

Payment of purchase-money for share in chattels. (2) The Continuing Partners have, before the execution hereof, paid (*s*) to the Outgoing Partner the sum of £—— [*or*, the sum of £——, part of the sum of £—— agreed to be paid] for the purchase of his share in the stock-in-trade and other personal chattels capable of passing by mere delivery, belonging to the late firm, which chattels have been delivered to the Continuing Partners, and are now in their exclusive possession:

[(3) *Withdrawal of any capital by A. B., see p.* 507:]

[Bond of even date.] [(4) The payment of the said sum of £——, balance of the purchase-money, has been secured to the Outgoing Partner by the joint and several bond of the Continuing Partners of even date herewith:]

NOW IT IS HEREBY AGREED as follows:—

Partnership to be dissolved as regards the Retiring Partner only. 1. THE partnership between the parties hereto in the trade or business of ——, hitherto carried on by them at ——, under a Partnership Deed (hereinafter called the Principal Articles) dated, &c., and made, &c. (*parties*), shall be dissolved, as regards the Outgoing Partner, as from the —— day of —— last, and the business shall, as from that date, belong to the Continuing Partners, and be carried on by them in partnership under the provisions of the Principal Articles, with such variations only as the change of partnership may render necessary, in equal shares

(*r*) The notices to customers and the order for the advertisement in the *London Gazette* should be signed at the same time.

Stamp Duty. (*s*) A separate receipt should be given under a 2*d.* stamp; as the agreement is not under seal the recital will not be conclusive. It must, however, be noted that the I. R. Commissioners contend that *ad valorem* duty is payable on the whole consideration moving from the retiring partner and that *ad valorem* duty may be claimed on the amount of the purchase-money apportioned in respect of the chattels: *Garnett* v. *I. R. C.* (1899), 81 L. T. 633; Highmore, 4th ed., 161.

[*or*, and the said C. D. shall be entitled to —— share in the assets and profits of the new firm, and the said E. F. to the remaining —— share therein, and they shall bear the losses (if any) in the same proportions].

Book debts to be collected by Receiver.

2. THE book debts owing to the late firm shall be collected by X. Y., of, &c. [or failing him by ——], on behalf of the late firm, and shall be applied by the Receiver as follows—

(i) In payment to the Receiver of a commission of £5 per cent. on the gross amount received by him by way of remuneration for his services.

(ii) In payment of the debts and liabilities of the late firm.

(iii) The surplus shall be divided between the parties hereto in equal shares [*or whatever their shares may have been in the profits of the late firm*].(*t*)

Debts and liabilities of old firm to be paid by old firm.

3. THE debts and liabilities of the old firm, so far as they are not satisfied out of the book debts as aforesaid, shall be paid by the parties hereto in equal shares [*or*, in proportion to their respective shares in the profits of the late firm].

Retiring Partner may carry on same business if he thinks fit.

4. INASMUCH (*u*) as, in estimating the sum to be paid in respect of purchase-money as aforesaid, nothing was added in respect of the goodwill of the business, the Outgoing Partner shall be at liberty to carry on the like business wherever he may think fit, but shall not be entitled to solicit the customers of the late firm.

AS WITNESS, &c.

No. X.

AGREEMENT *for* DISSOLUTION *of* PARTNERSHIP, *where* PARTNERSHIP PROPERTY *consists only of* PERSONAL CHATTELS *and* BOOK DEBTS, *and the* BOOK DEBTS *and also the* LIABILITIES *of the* OLD FIRM *are to be taken over by the* NEW FIRM, *and where the* GOODWILL *is paid for.*(*v*)

THIS DISSOLUTION AGREEMENT is made, &c. (*as in last Precedent, down to end of clause* 1, *omitting recital of bond of even date*):

(*t*) As the book debts are not sold, no *ad valorem* stamp duty will be payable in respect thereof under the Stamp Act, 1891, s. 59. If there are any freeholds or leaseholds, these must be separately conveyed on trust for sale, and the stamp duty paid on the conveyance according to the amount of the purchase-money therefor.

(*u*) This will only be inserted, if so agreed.

Stamps.

(*v*) The stamp on this agreement will be an *ad valorem* duty of £1 per £100 on the sum to be paid for the purchase of the share of the book debts

Continuing Partners to purchase share of Retiring Partner in book debts.

2. THE Continuing Partners hereby agree to purchase the share of the Outgoing Partner in the goodwill of the said business and in the book debts (*w*) owing to the old firm, for the sum of £—— , the said purchase to take effect from the —— day of —— last. [The said purchase-money shall be contributed by the said C. D. and E. F. in the proportions in which they are to be entitled to the assets of the new firm as aforesaid.]

Also to take over liabilities of old firm, and to be allowed for Retiring Partner's share of same.

3. THE Continuing Partners shall take upon themselves [in the proportions in which they are to be entitled to the assets of the new firm] all the debts and liabilities of the old firm, and shall keep indemnified the Outgoing Partner and his estate and effects therefrom, and he shall pay or allow to them on account the sum of £——, as being —— (*state the share*) part of the amount thereof.

Balance payable to Retiring Partner secured by bond.

4. THE said sum or allowance of £—— , being deducted from the said sums of £—— (*balance of purchase-money for chattels*) and £—— (*purchase-money for book debts and goodwill*), leaves a balance of £——, the payment whereof, with interest, has been secured by the joint and several bond of the Continuing Partners bearing even date herewith.

Agreement by Retiring Partner not to compete.

5. THE Outgoing Partner shall not during his life, &c. (*continue as in clause 5 of Prec. VII, supra, p. 509, agreement not to compete*).

AS WITNESS, &c.

No. XI.

NOTICE *by* PARTNER *to determine a* PARTNERSHIP *under a power.*(*x*)

To C. D., of, &c., E. F., of, &c., and all others whom it may concern :

PURSUANT TO THE POWER for this purpose contained in our Partnership Deed, dated the —— day of ——, I HEREBY GIVE YOU NOTICE of my intention that the partnership now subsisting between us under the said Deed shall cease and determine at the expiration of six months from the date hereof.

AS WITNESS my hand this —— day of ——.

A. B. (*partner*).

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and the goodwill, without any deduction for the liabilities. As to the stamp duty in regard to the stock-in-trade and chattels, see second note to last Precedent. Separate receipts should be given for the purchase-money. Notices to customers and the order for the advertisement in the *London Gazette* should be signed at the same time.

Receipts and notices.

(*w*) See note to Prec. VII at p. 508, *supra*.

(*x*) The notice must of course comply with the terms of the power.

No. XII.

NOTICE *of* DISSOLUTION *of* PARTNERSHIP *to be inserted in the "London Gazette."*(*y*)

NOTICE IS HEREBY GIVEN, that the partnership which has for some time past been carried on by A. B., C. D., and E. F. under the style of ——, at ——, in the trade or business of ——, was this day dissolved by mutual consent [*or*, under a power for that purpose contained in the Partnership Deed, and (*if the case*) that in future the said business will be carried on by the said C. D. and E. F. in partnership.]

As WITNESS our hands this —— day of ——, 19—.

A. B.
C. D.
E. F.

No. XIII.

UNDERTAKING *by* AGENT *appointed to* INSPECT PARTNERSHIP BOOKS.(*z*)

To A. B., C. D., and E. F., carrying on the business of ——, in partnership at ——.

I, X. Y., of, &c., having been appointed by the said A. B., one of the above-named partners, to inspect and make extracts from the partnership books and accounts for the purpose of confidentially advising him, hereby undertake with you and with each of you not to use any information acquired by me in the course of my inspection for any other purpose.

As WITNESS my hand this —— day of ——, 19—.

No. XIV.

ACKNOWLEDGMENT *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PARTNER *that the* SHARE *of the* DECEASED *in the* PARTNERSHIP PROPERTY *has been* SATISFIED.(*a*)

To C. D., E. F. and G. H., and all others whom it may concern :

WHEREAS :—

(1) By a Partnership Deed (hereinafter called the Articles) Partnership deed.

(*y*) This notice must either be signed by all the partners personally or as regards the outgoing partner under a power of attorney.

(*z*) See *Bevan* v. *Webb* [1901], 2 Ch. 59 ; 70 L. J. Ch. 536.

(*a*) It is assumed that the Articles contained proper provisions for ascertaining the purchase-money to be paid for the share of a deceased partner, and for vesting the share in the other partners ; also, that if there are any freeholds

dated, &c., and made, &c., the said A. B., C. D., E. F. and G. H. agreed to become partners in the trade or business of ——, at ——, subject to the conditions therein contained, and the Articles contained, &c. (*Recite clauses relating to the purchase of a deceased partner's share and to the ascertainment of the purchase-money*) :

Death of a partner, and representation to his estate.

(2) The said A. B. (*deceased partner*) died on the —— day of ——, 19—, having duly made his Will, dated the —— day of ——, 19—, whereby he appointed I. K. and L. M. (hereinafter called the Personal Representatives) to be his Executors, who on the —— day of —— duly proved the same in the Principal Probate Registry [*or*, died, &c., intestate, and Letters of Administration were on the —— day of —— granted by the —— Probate Registry to I. K. and L. M. (hereinafter called the Personal Representatives) in respect of the estate of the said A. B.] :

Repayment of capital.

(3) The said C. D., E. F., and G. H. (hereinafter called the Continuing Partners) have paid to the Personal Representatives the sum of £——, standing to the credit of the said A. B. at the date of his death in the books of the said firm, as part of the capital thereof with interest thereon from the date of the last payment of interest to the date of repayment at the rate prescribed by the Articles, as the Personal Representatives hereby admit :

Share of the deceased partner according to the last annual account or according to a valuation.

(4) By the last annual account of the assets and liabilities of the firm, taken under the provisions of the Articles, it appears that the sum of £—— was the net value of the share of the said A. B. on the —— day of —— last :

[*Or* (4) By a valuation duly made pursuant to the Articles it appears that the sum of £—— was the net value of the share of the said A. B. at the date of his death :]

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or chattels real, they were vested in all the partners as joint tenants on trust for sale, so that on the death of one partner the legal estate passed to the survivors. In these circumstances the whole beneficial interest of the deceased partner in the partnership property will have effectually passed to the surviving partners by virtue of the provisions in the Articles if they are in the usual form. The money payable to the representatives is a mere debt for which a simple receipt over a receipt stamp is sufficient. Where the accounts are complicated they may be scheduled and a release given under seal ; and see Prec. XVII, p. 525, *infra*. Where the testator specifically devised his share in partnership freeholds, the devisees took free from liability to contribute to partnership debts where the firm were solvent and the other assets were sufficient to discharge the debts ; *Re Holland* [1907], 2 Ch. 88 ; 76 L. J. Ch. 449, but the R. E. Charges Acts were not referred to ; after 1925 he can only bequeath his share in the proceeds of sale of partnership land.

Devise of partnership property.

(5) The Continuing Partners have before the execution hereof paid to the Personal Representatives the sum of £——, being interest at the rate of £—— per centum per annum, on the said sum of £——, from the —— day of —— last up to the death of the said A. B., as the Personal Representatives hereby acknowledge : Payment by Continuing Partners of interest up to death.

[*Or* (5) The Continuing Partners have, before the execution hereof, paid to the Personal Representatives the sum of £——, being the interest on the said purchase-money from the death of the said A. B. up to the date hereof, and have also accounted to the Personal Representatives for the share of the said A. B. in the net profits of the said business from the date of the last annual account up to the date of his death, as the Personal Representatives hereby acknowledge :]

(6) By a Deed of Covenant bearing even date herewith and made between the Continuing Partners of the one part, and the Personal Representatives of the other part, the Continuing Partners covenanted to pay (*recite covenant to pay purchase-money by instalments and interest and covenant for indemnity, as in Prec. VIII, p.* 510, *supra*) : Deed of covenant for payment of purchase-money and for indemnity.

[*Or* (6) The Continuing Partners have given their joint and several bond (*b*), bearing even date herewith, in the penal sum of £——, subject to a condition thereunder written for making the same void on payment by the Continuing Partners, or some or one of them, to the Personal Representatives of the sum of £——, by four equal instalments, payable respectively on the —— day of ——, 19—, the —— day of ——, 19—, the —— day of ——, 19—, and the —— day of ——, 19—, with interest at the rate aforesaid on the amount for the time being remaining unpaid, from the said —— day of —— last (*day of the death*), and upon the Continuing Partners indemnifying the Personal Representatives, and the estate of the said A. B., deceased, from and against the debts and liabilities of the said partnership and all claims and demands in respect thereof :] [Or bond for same purpose.]

NOW, the Personal Representatives, as the Personal Representatives of the said A. B., deceased, hereby acknowledge and declare that the said sums of £—— and £—— respectively paid and secured to them as aforesaid [together with the net profits Acknowledgment by Personal Representatives of receipt of share of assets.

(*b*) The deed of covenant or bond will require an *ad valorem* stamp of 2*s.* 6*d.* for every £100 secured, and an additional 10*s.* for the indemnity. Stamp.

so accounted for as aforesaid], are in full satisfaction of the share of the said A. B., deceased, in all the property and assets of the late partnership.

AS WITNESS the hands of the Personal Representatives this —— day of ——, 19—.

(Signed) I. K.
L. M.

No. XV.

ACKNOWLEDGMENT (*c*) *by* RETIRING PARTNER *that his* SHARE *in the* PARTNERSHIP PROPERTY *has been* SATISFIED.

To C. D., E. F., and G. H. (hereinafter called the Continuing Partners), and all others whom it may concern: WHEREAS:—

(1) (*Recite Partnership Articles as in last Precedent*):

Notice. (2) By a writing under the hand of the said A. B. (hereinafter called the Outgoing Partner), dated the —— day of ——, 19— (and addressed to the Continuing Partners), the Outgoing Partner gave notice to the Continuing Partners that he intended to retire from the partnership as from the —— day of ——, 19—:

(3) (*Recite repayment of capital as in last Precedent*):

(4) (*Recite share of Outgoing Partner according to last annual account or according to a valuation as in last Precedent*):

(5) (*Recite payment of interest by Continuing Partners to Outgoing Partner up to date, see last Precedent*):

(6) (*Recite deed of covenant or bond for payment of purchase-money and indemnity by Continuing Partners to Outgoing Partner, see last Precedent*):

Firm entitled to certain lands. (7) The (*d*) assets of the said firm include certain freehold, enfranchised and leasehold lands, which were vested in the Outgoing and Continuing Partners on trust for sale, and the share of the Outgoing Partner therein was valued at £——,

Release to the Continuing Partners. (8) By a Release of even date herewith the said lands have been released by the Outgoing Partner (who retired from the trust) unto the Continuing Partners:

NOW, the Outgoing Partner hereby acknowledges that the said sums of £—— and £——, paid and secured to him respectively

(*c*) This will require a twopenny receipt stamp only.

Release of real estate. (*d*) This and the next recital apply only where there is land. The conveyance of the real estate must be stamped with an *ad valorem* stamp for the sum at which the outgoing partner's share therein was valued. See next Precedent for a form of release.

as aforesaid, are in full satisfaction of his share in all the property and assets of the said partnership.

AS WITNESS the hand of the Outgoing Partner this —— day of ——, 19—.

No. XVI.

RELEASE *by* OUTGOING PARTNER *of his* SHARE *in* FREEHOLD, ENFRANCHISED *and* LEASEHOLD LANDS *belonging to the firm to the* CONTINUING PARTNERS.(*e*) (*Legal Estate.*)

THIS RELEASE is made, &c., BETWEEN A. B., of, &c. (*Outgoing Partner*) (hereinafter called the Vendor), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (*Continuing Partners*) (hereinafter called the Purchasers), of the other part: WHEREAS :— Parties.

(1) The Vendor and Purchasers are seised of the freehold properties mentioned in the first part of the First Schedule hereto for an estate in fee simple in possession as joint tenants on trust for sale, subject to the incumbrances mentioned in the second part of that Schedule so far as they respectively affect the premises, but otherwise free from incumbrances: Title to freeholds subject to incumbrances.

(2) The Vendor and Purchasers are also seised of the enfranchised properties mentioned in the first part of the Second Schedule hereto (formerly copyhold of the manors mentioned in that Schedule, they having been admitted thereto on the respective dates mentioned in that Schedule) for an estate in fee simple in possession as joint tenants on trust for sale, subject to the manorial incidents and rights reserved to the lords of the said manors, and to the incumbrances mentioned in the second part of that Schedule so far as they respectively affect the premises, but otherwise free from incumbrances: Title to enfranchised lands subject to incumbrances.

(3) The leasehold properties mentioned in the first part of the Third Schedule hereto are, by virtue of the divers mesne Title to leaseholds subject to incumbrances.

(*e*) The deed should be executed in duplicate. The stamp should be adjudicated; see Fin. (1909-10) Act, 1910, ss. 4 (3), 73. It is assumed that a separate deed of dissolution (see Prec. VII, p. 506) will be executed dealing with the goodwill, book debts, &c.

It must be produced to the stewards within six months from date for endorsement and the fines, &c., must be paid.

Partners hold on trust for sale by virtue of L. P. Act, 1925, s. 36, where the land is vested in them as joint tenants. If it was formerly vested in undivided shares it would similarly vest in them as joint tenants and be held on trust for sale: *ib.*, 1st Sch., Pt. IV, see also ss. 34 and 35; *cf. Re Bourne* [1906], 2 Ch. 427; 75 L. J. Ch. 779. For the statutory power to postpone sales: *ib.*, s. 25. Trust for sale.

assignments and acts in the law mentioned in the second part of that Schedule, now vested in the Vendor and Purchasers as joint tenants on trust for sale for the respective residues of the terms granted by the Leases mentioned in the first part of that Schedule, at the rents and subject to the lessees' covenants and conditions respectively reserved and contained in those Leases, and subject to the incumbrances mentioned in the third part of that Schedule, so far as they respectively affect the premises, but otherwise free from incumbrances :

Proceeds of sale part of partnership assets.

(4) At the date of dissolution hereinafter mentioned the proceeds of sale of the said freehold, enfranchised, and leasehold properties formed part of the assets of the firm of —— & Co., wherein the parties hereto were the only partners, and the Vendor was entitled to a —— share in such assets under a Partnership Deed (hereinafter called the Articles) dated, &c., and made, &c. :

Outgoing partner has ceased to be a member of the firm.

(5) Under the Articles, and by reason of (*here state the notice of retirement or other event whereby the Outgoing Partner was discharged*), the Vendor ceased as from the —— day of ——, 19— (hereinafter referred to as the date of dissolution), to be a member of the said firm, the business whereof is intended as from the date of dissolution to be carried on by the Purchasers under the Articles :

The fixing of the purchase-money for the share of the outgoing partner.

(6) The Vendor has, for the purpose of giving effect to the provisions of the Articles, agreed to sell his —— share in the proceeds of sale of the said properties to the Purchasers, subject only to his proper proportion of his liability for the said incumbrances at the price of £—— :

Extent of Vendor's liability for incumbrances.

(7) At the date of dissolution the Vendor was (as between himself and the Purchasers) liable only for the payment of the principal sum of £—— in respect of the incumbrances mentioned in the First, Second, and Third Schedules hereto, being his share in the aggregate principal sum of £—— then owing in respect of those incumbrances :(*f*)

Payment of interest up to date of dissolution.

(8) All interest which accrued in respect of the said incumbrances has been duly paid up to the date of dissolution, and it is intended that the Purchasers shall be entitled to the net rents and profits of the said properties (after payment of interest, rents, rates, taxes, and other outgoings) as from the date of dissolution :

Stamp.

(*f*) The amount of the Vendor's liability for incumbrances must be added to the purchase-money for ascertaining the stamp duty payable. The stamp should be adjudicated.

(9) It has (among other things) been agreed that, for giving effect to the provisions of the Articles, the Vendor should retire from the said trusts for sale, that the said properties should be vested in the Purchasers alone, and that such release should be executed as is hereinafter contained : Agreement to retire from trust and for release.

NOW THIS DEED WITNESSETH, and it is hereby declared as follows :—

1. THE Vendor hereby declares that he is desirous of being discharged from the trusts affecting the properties respectively mentioned in the First, Second and Third Schedules hereto. Desire to be discharged.

2. THE Purchasers hereby consent to the discharge of the Vendor from the trusts aforesaid and to the vesting in the Purchasers alone of the trust property. Consent to discharge.

3. ALL the parties hereto (*g*) do, and each of them doth hereby declare, that the properties respectively mentioned in the said Schedules shall forthwith vest in the Purchasers alone as joint tenants and as trustees for sale for all the estates, terms and interests formerly vested in the parties hereto for the purposes and upon the trusts affecting the same. Vesting declaration.

4. IN pursuance of the said agreement and in consideration of the sum of £—— (*purchase-money*) now paid (*h*) by the Purchasers to the Vendor (the receipt of which sum the Vendor hereby acknowledges), and of the covenants for indemnity hereinafter contained, the Vendor, As Beneficial Owner, and according to his share or interest hereinbefore mentioned in the proceeds of sale, hereby conveys and releases unto the Purchasers : Conveyance and release of share in proceeds.

ALL AND SINGULAR the properties respectively described in the First, Second and Third Schedules hereto, AND all the share Parcels.

(*g*) Though under T. Act, 1925, s. 40 (2), a vesting declaration is implied on the discharge of a trustee, it is better in this case to have an express declaration, as the release *infra* might be held to show a contrary intention. As to the discharge of a trustee without a new trustee being appointed in his place : *ib.*, s. 39. In the case of registered land there should be a registered transfer and the purchase-money should be apportioned. Vesting declarations implied. Registered land.

(*h*) Though the purchase-money may be payable by instalments and may be secured by a separate deed or bond, this should not be referred to. In some cases the release is executed as an escrow till the last instalment is paid.

Notice of the vesting declaration and release of the rights of redemption should be given to the incumbrancers. A joint tenant can release to his co-joint tenants : L. P. Act, 1925, s. 36 (2) ; but in this case the release operates on the equitable interest in the proceeds of sale, the legal estates are got in by the vesting declaration. Notices.

A purchaser is not concerned with the trusts affecting the proceeds of sale even where they are disclosed : *ib.*, s. 27 (1). Trusts.

or interest of the Vendor in the proceeds of sale thereof, or in the rents and profits thereof until sale,

Habendum.

TO HOLD unto the Purchasers absolutely, subject, so far as the premises are respectively affected thereby, to the rights of the lords of the said manors, to the liabilities under the said leases and to incumbrances respectively mentioned in the second parts of the First, Second and Third Schedules hereto, so far as they respectively affect the premises, and so subject, IN TRUST for the Purchasers according to their respective shares and interests therein under the Articles, and by reason of the Vendor having ceased to be a partner as aforesaid.

Covenant to pay rents, observe lessees' covenants, and indemnify.

5. (1) THE covenants implied under paragraph (C) of section seventy-seven of the Law of Property Act, 1925, shall extend to the leasehold properties mentioned in the Third Schedule hereto.

(2) The Purchasers hereby jointly and severally covenant with the Vendor that the Purchasers and their respective estates and effects will at all times hereafter save harmless and keep indemnified the Vendor and his estate and effects from and against all proceedings, costs, claims and demands in respect of the incumbrances mentioned in the Schedules hereto or any of them.

Apportionment of incumbrances between purchasers from date of dissolution.

6. WITHOUT prejudice to the rights and remedies of the respective incumbrancers, &c. (*continue and adapt according to the names and shares of the Purchasers, clause* 3 *of Partnership, Prec. III, p.* 498, *supra*).

Additional powers.

7. THE Purchasers or the survivors, &c. (*continue as in clause* 4 *of Partnership, Prec. III, p.* 498, *supra*).

[8. *If the aggregate purchase money payable in reference to the dissolution, plus the share in the incumbrances, does not exceed* £500 *add the usual certificate as to value.*]

IN WITNESS, &c.(*i*)

THE FIRST SCHEDULE.

First Part.

Particulars of freehold properties.

1. ALL THAT, &c.

2. ALL THOSE, &c.

NOTE.—These properties became subject to a trust for sale by virtue of the Law of Property Act, 1925, section thirty-six

Execution under irrevocable power of attorney.

(*i*) If the Partnership Articles confer an irrevocable power of attorney for getting in the share of an outgoing partner (*e.g.*, on his death, bankruptcy, lunacy, retirement, or expulsion), then a release can, if necessary, be executed

[*or s. 34 as the case requires, or refer to the conveyances creating the trusts for sale, if there are any, or otherwise show how the trusts for sale were created*].

Second Part.

Particulars of incumbrances affecting freehold properties.

1. £—— Secured by a Mortgage dated, &c., and made, &c., of the property, numbered — in the first part of this Schedule, with interest thereon at £— per cent. per annum [now vested in —— and ——].
2. £—— Secured, &c.

THE SECOND SCHEDULE.

First Part.

Particulars of enfranchised lands affected by manorial incidents.(*j*)

1. ALL THAT, &c., to which the Vendor [and Purchasers were] was admitted on the —— day of ——, and which lands were formerly copyhold of the Manor of ——, in the County of ——.

2. ALL THOSE, &c.

NOTE.—These properties became subject to a trust for sale, &c. (*see Note to first part of First Schedule*).

Second Part.

Particulars of incumbrances affecting enfranchised lands.

1. £—— Formerly secured by a Conditional Surrender dated, &c., by —— and —— to the use of —— and ——, with interest at £— per cent. per annum, now converted into a mortgage by demise and vested in ——.

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under that power, but in that case the powers under the T. Act, 1925, as to discharging a trustee and as to vesting declarations, if employed, should be strictly followed. The purchase-money must, of course, be accounted for to the personal representatives, trustee in bankruptcy, committee or receiver in lunacy, or outgoing partner, as the case may require, but a purchaser from the continuing partners will not be concerned with this.

(*j*) If the manorial incidents have been extinguished by a compensation agreement or by notice the lands should be included in the freehold schedule; any lord's rights not acquired should be excepted out of the parcels and the compensation rentcharge (if any) should be mentioned with the other incumbrances. Extinguishment of manorial incidents.

2. £—— Formerly secured, &c.

THE THIRD SCHEDULE.

First Part.

Particulars of leaseholds.

Date of Lease.	Parties to Lease.	Property Demised.	Term.	Yearly Rent. £ s. d.
1.				
2.				
3.				

NOTE.—These properties became subject to a trust for sale, &c. (*see Note to first part of First Schedule*).

Second Part.

Devolution of leasehold interests.

As to the premises comprised in Lease numbered 1.

——, 18—. On this date the said —— (*one of lessees*) died.

——, 18—. By an Assignment of this date made between, &c., the premises were assigned to ——.

——, 19—. By the Will of the said —— (*lessee*) of this date he appointed —— and —— to be his Executors.

——, 19—. On this date the said testator died.

——, 19—. On this date the said Will was proved by the said Executors at the —— Probate Registry.

——, 19—. By an Assignment of this date made, &c. (*assignment to the partners*).

As to the premises comprised in Lease numbered ——.

(*Here state the title, see, e.g., as above.*)

Third Part.

Particulars of incumbrances affecting leaseholds.

1. £—— Secured by a Mortgage dated, &c., and made, &c., whereby the premises comprised in Lease number —— were demised to —— and —— for the residue of the term granted by that lease (except the last —— days thereof), with interest at the rate of £— per cent. per annum.

2. £—— Secured by a Legal Charge, &c.

No. XVII.

RELEASE *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PARTNER *of his* SHARE *in the* GOODWILL *and other* ASSETS *of the* FIRM *to the* CONTINUING PARTNERS.(*k*)

Parties.

THIS RELEASE is made, &c., BETWEEN X. T., of, &c., and Y. T., of, &c. (hereinafter called the Vendors), of the one part, and C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called the Purchasers), of the other part: WHEREAS:—

Partnership Articles.

(1) By a Partnership Deed (hereinafter called the Articles) dated, &c. (*Recite the Articles between A. B., the testator or intestate, and the Purchasers, setting out the provisions for the purchase of a deceased partner's share and for fixing the amount of the purchase-money*):

Death, &c.

(2) The said A. B. died on, &c., having by his Will dated —— appointed the Vendors to be his executors, who on the —— day of —— duly proved the same at the —— Probate Registry [*or*, died, &c., intestate, and Letters of Administration to his estate were on, &c., granted by the —— Probate Registry to the Vendors]:

Payment of capital.

(3) On the —— day of —— the Purchasers paid to the Vendors, as such Personal Representatives as aforesaid, the sum of £——, being the amount standing to the credit of the said A. B. at his death in respect of his capital in the business, with interest thereon at the rate prescribed in the Articles, from the date of last payment of interest to the date of the repayment of the capital, as the Purchasers hereby admit:

Assets belonging to firm at death.

(4) The assets belonging to the firm at the death of the said A. B. consisted of: FIRST, the freehold lands, enfranchised lands and leasehold lands, policies of assurance, investments and securities respectively mentioned in the several parts of the First Schedule hereto, all of which were at law vested in the said A. B. and the Purchasers as joint tenants, and, as regards the said lands on trust for sale and all the properties mentioned in the First Schedule hereto, were of the agreed gross value of £——; SECONDLY, certain stock-in-trade, furniture, and other personal

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Lands of the partnership.

(*k*) The freeholds, enfranchised lands and leaseholds of the firm will be vested in the partners or in four of them as joint tenants on trust for sale so that no conveyance thereof will be required. And see last Precedent. The personal representatives will only be concerned with the share in the proceeds of sale.

chattels capable of passing by delivery of the agreed gross value of £——; THIRDLY, certain book debts which (after making allowance for bad or doubtful debts) were of the agreed value of £——; AND FOURTHLY, the goodwill of the said business of the value (fixed pursuant to the Articles) of £——, making together the gross aggregate sum of £——:

Liabilities of firm at death.

(5) The liabilities of the firm at the death of the said A. B. consisted of the mortgage debts, trade debts, and other liabilities shortly referred to in the Second Schedule hereto of the agreed aggregate amount of £——, which, being deducted from the said aggregate sum of £——, leaves the net aggregate sum of £—— as the agreed net value of the partnership assets at the death of the said A. B.:

As to the deceased's share.

(6) Under the Articles the said A. B. was at his death entitled to —— share of the net assets of the firm, and pursuant to the provisions thereof the purchase-money for his share has been fixed at the sum of £——, apportioned as follows: in respect of the said lands the sum of £——, in respect of the said policies of assurance, investments, and securities the sum of £——, in respect of the said stock-in-trade, furniture, and other personal chattels capable of passing by delivery the sum of £——, in respect of the said book debts the sum of £——, and in respect of the said goodwill the sum of £——:

Of the payment or discharge of the purchase-money.

(7) Before the execution hereof the said purchase-money has been paid or secured to the Vendors, as they, as such Personal Representatives as aforesaid, hereby acknowledge:

Registration of representatives.

(8) The said Probate has [*or*, The said Letters of Administration have] been duly registered with the several insurance societies and corporations mentioned in the First Schedule hereto, and notice of the said death has been given to the respective mortgagees under the mortgages mentioned in the Second Schedule hereto:

The handing over of the personal chattels.

(9) The said stock-in-trade, furniture and other personal chattels were duly handed over to the Purchasers and are now (so far as the same have not been disposed of) in their exclusive possession:

Of agreement to assign share in book debts and goodwill.

(10) The Vendors, as such Personal Representatives as aforesaid, have agreed to assign the share of the said A. B. in the said book debts and goodwill in manner hereinafter appearing:

Usual notices and advertisement.

(11) The usual notices and advertisement of the said death and the consequential change in the firm have been given to the customers of the firm and inserted in the *London Gazette*:

NOW THIS DEED WITNESSETH as follows :—

1. In pursuance of the said agreement and in consideration of the said sums of £—— and £—— (*purchase-money for the goodwill and book debts*) so paid or discharged as aforesaid, the Vendors, As the Personal Representatives of the said A. B., deceased, hereby assign and release unto the Purchasers: Assignment of share in goodwill and book debts.(*l*)

All the share and interest of the said A. B. in the goodwill (so far as the goodwill is not annexed to any of the said lands with any buildings thereon which have devolved to the Purchasers by survivorship) of the said business and in the book debts and credits of the said firm,

To have and receive the same unto the Purchasers absolutely (*m*) in equal shares.

[*Or*, To have and receive the same as to —— share of the premises unto the said C. D. absolutely, as to another —— share of the premises unto the said E. F. absolutely, And as to the remaining —— share in the premises unto the said G. H. absolutely, but subject in each case to a rateable proportion of the liabilities of the firm.]

2. The Vendors or other the representatives from time to time of the said A. B. shall, from time to time, at the request and cost of the Purchasers or other the members for the time being of the said firm, take or join in all such proceedings and execute and do all such other instruments, acts and things as may be reasonably required for recovering, compelling payment of, or getting in, any of the book debts or other outstanding assets of the old firm.(*n*) Agreement to assist in getting in assets.

In witness, &c.

(*l*) Notice in writing should be given to the debtors of the assignment of the share in the book debts.

If the articles contain an irrevocable power of attorney for getting in the book debts, this deed will not be required and the stamp duty will be saved. The stamp should be adjudicated. See as to stamp duty, *Garnett* v. *I. R. C.* [1899], 81 L. T. 622. In this case simple receipts can be taken from the executors for the share in each separate class of property; and see Prec. XIV, p. 515. As to saving stamp duty.

(*m*) It is assumed that the purchasers have by a separate deed covenanted to indemnify the personal representatives and the estate of the testator from the liabilities of the firm; see Prec. VIII, p. 510.

So far as the local goodwill (if any) inevitably passes with the land, *semble*, undivided shares therein cannot be created: L. P. Act, 1925, ss. 34, 205 (1) (ix). Undivided shares in goodwill.

(*n*) *Semble*, the personal representatives cannot properly give a power of attorney in such a case, but see T. Act, 1925, s. 25.

THE FIRST SCHEDULE.

Particulars of the assets belonging to the firm at the death of the said A. B.

(*This schedule will be divided up into as many parts as there are classes of assets.*)

THE SECOND SCHEDULE.

Short particulars of the liabilities of the firm at the death of the said A. B.

CHAPTER V.

The Law of Patents.

[*Revised by* Julian Q. Henriques, Esq., *of the Inner Temple, Barrister-at-Law.*]

Sect. I.—*The Grant of Letters Patent.*

Origin of Patent system.

The Patent system of this country owes its origin to the Statute of Monopolies, 21 Jac. 1, c. 3 (1623–1624), which declared the "grants of privileges for the term of 14 years or under . . . . of the sole working or making of any manner of new manufacture within this realm to the true and first inventor and inventors of such manufactures . . . . so as also they be not contrary to the law, nor mischievous to the State, by raising prices of commodities at home or hurt of trade or generally inconvenient . . . . " (*a*) to be not illegal.

Statute of Monopolies.

The meanings of the terms "true and first inventor" and "invention" do not come within the scope of this note, and reference should be made to the text books on patent law.(*b*) The whole of the statute law, independently of emergency legislation, relating to patents is now contained in the Statute of Monopolies, the Patents and Designs Act, 1907, as amended by the Patents and Designs Act, 1914,(*c*) and the Patents and Designs Act, 1919. The Act of 1919 repealed certain sections of the Act of 1907 and substituted others in place of them; it contains certain additional enactments. By s. 22 (1) of the Act of 1919 the principal Act and that Act may be cited together as the Patents and Designs Acts, 1907 and 1919.(*d*)

Patents and Designs Acts, 1907 and 1919.

Nature of Patent Rights.

A patent right is a privilege granted by the Crown in the exercise of its prerogative.

Letters Patent, by the terms of the grant,(*e*) confer on the

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(*a*) S. 6. A patent is a franchise: *R.* v. *Halifax C. C. Judge* [1891], 1 Q. B. 793; *aff.* [1891], 2 Q. B. 263; 60 L. J. Q. B. 550. Franchise.

(*b*) *E.g.*, Frost, Patent Law and Practice, 4th ed.; Terrell, Letters Patent for Inventions, 6th ed.

(*c*) Amends s. 91 (1) of the Act of 1907, by extending the priority rights under that section, of an applicant for patent &c., protection in a foreign state, to his representatives and assigns.

(*d*) These two Acts have, pursuant to P. & D. Act, 1919, s. 21 (2), been printed together in consolidated form, under the title "Patents and Designs Acts, 1907 and 1919 (Consolidated)." Consolidation.

(*e*) For forms of Letters Patent, see Patents Rules, 1920, Sch. III.

patentee, during the term of the patent, an exclusive right by himself, his agents or licensees, to make, use, exercise and vend the invention within the United Kingdom and the Isle of Man. They further prohibit others within the United Kingdom and the Isle of Man from "directly or indirectly putting in practice the invention or any part of the same and from in any way imitating the same . . . . without the consent, licence or agreement of the patentee."

Sealing of patents.

Patents are sealed with the seal of the Patent Office, which has the same effect as sealing with the Great Seal; they have effect throughout the United Kingdom and the Isle of Man: P. & D. Acts, 1907 and 1919, s. 14.

Irish Free State.

Ireland is still included in the grant of Letters Patent. It seems clear that Letters Patent actually granted before 5th December, 1922 (the date of the Irish Free State Constitution Act, 1922 (Session 2)), are operative in the Free State, but as regards patents granted after that date, and patents applied for before, but not actually granted until after that date, the position is obscure. The Irish Free State Adaptation of Enactments Order (S. R. & O., 1923, No. 405) apparently excludes the Free State from references to Ireland contained in the P. & D. Acts.

Semble (1) a patent sealed only with the seal of the Patent Office after 5th December 1922, is probably not operative in the Free State; (2) In any case the patentee's remedies under such patents are not regulated, so far as the Free State is concerned, by the P. & D. Acts passed in the British Parliament. A Bill to regularise the patent position in the Free State is now before the Free State Senate.

Crown rights.

The patentee is bound, under the terms of the Letters Patent, on pain of forfeiting his monopoly, to supply, for the services of the Crown, all such articles as may be required upon such reasonable terms and prices as shall be settled in manner for the time being by law provided.(*f*)

Thing in action.

A patent right is a thing in action (*g*) and is entirely distinct from the right of property in a chattel created under it.(*h*)

(*f*) See last note, and Sect. V, *infra*.

(*g*) See *British Mutoscope and Biograph Co. Ltd.* v. *Homer* (1901), 18 Rep. Pat. Cas. 175; *Re Dutton's Patent* (1923), 40 Rep. Pat. Cas. 84.

(*h*) *Steers* v. *Rogers* [1893], A. C. 232; 62 L. J. Ch. 671; *Edwards* v. *Picard* [1909], 2 K. B. 903; 78 L. J. K. B. 1108; see also *National Society, &c., of Electricity* v. *Gibbs* [1899], 2 Ch., at p. 299; [1900], 2 Ch. 280; 68 L. J. Ch. 503; 69, *ib.*, 457.

The patentee's rights under the patent cannot be taken under a *fi. fa.* or a *levari facias.*(*i*)

Procedure on application for grant of patent.

To obtain the grant of Letters Patent, application must be made at the Patent Office (*j*) accompanied either by a provisional or a complete specification.(*k*) If a provisional specification only is left with the application, a complete specification must be filed at the Patent Office within nine (with a possible extension to ten) months.(*l*)

Application deemed abandoned if no complete specification left.

Application void if complete specification not accepted.

If no complete specification is left within the prescribed time, the application will be deemed to have been abandoned : s. 5 (2). If the complete specification is not accepted within fifteen months (with a possible extension to eighteen months) from the date of the application, such application becomes void unless an appeal has been lodged : s. 6 (5). On the acceptance of the complete specification, the Comptroller advertises the acceptance and the application and specifications are open to public inspection : s. 9 ; rr. 40 and 41. When an application has been abandoned or become void before the complete specification has been accepted, the specification and drawings left in connexion with it will not be published : s. 69 (1) ; except in certain cases of applications under international or colonial arrangements : s. 91 (3) (a) ; Patents Rules, 1920, r. 17.

Publication of specification.

Grant and date of Letters Patent.

When all the prescribed formalities have been complied with and if there is no opposition to the grant :(s. 11 ; rr. 42–49), Letters Patent for the invention are, on payment of the prescribed fee, granted to the applicant, dated and sealed as of the date of the application : ss. 13 and 14 ; rr. 50 and 51.

Date of Convention Patents.

Convention patents, *i.e.*, patents granted under international and colonial arrangements, bear the date of the foreign application for protection : s. 91.

Patents granted in form prescribed.

Patents, except in special circumstances, are granted to inventors in the form prescribed in the Patents Rules (s. 14 (2) and Patents Rules, 1920, Sch. III), for the term of sixteen years : s. 17.

Term of patent.

Before the P. & D. Act, 1919, patents were granted for a term of fourteen years, and any patent, the original term of which had not expired on the 23rd December, 1919 (the date of the

(*i*) *Edwards* v. *Picard, supra.*

(*j*) Applications and notices may be sent by post : P. & D. Acts, 1907 and 1919, s. 81 ; Patents Rules, 1920, r. 7.

(*k*) Ss. 1-16 ; see also the Patents Rules, 1920, rr. 10–51 ; and "Instructions to Applicants," issued by the Patent Office.

(*l*) P. & D. Acts, 1907 and 1919, s. 5 (1).

commencement of the Act), has effect as if the term mentioned therein were sixteen instead of fourteen years, subject to certain conditions as to existing licences: P. & D. Act, 1919, s. 6 (2).(*ll*)

Prolongation of term of patent.

In cases where the patentee has not been adequately rewarded this term may be extended for a further term not exceeding five, or, in exceptional cases, ten years: s. 18; see also note to Form No. 16, *infra*. An extension may also be granted where the patentee, as such, has suffered loss or damage by reason of hostilities between His Majesty and any foreign state. An extension on the ground of loss due to hostilities cannot be granted where the patentee was a subject of such enemy state or was a company managed or controlled by such subjects or carried on wholly or mainly for their benefit.(*m*) The Court has power to limit an extension, to certain claiming clauses only, of the patent: *Re Lodge's Patent* [1911], 2 Ch. 46; 80 L. J. Ch. 517.

Restoration of lapsed patent.

The Comptroller may, on the application of the patentee, order the restoration of a patent that has lapsed for non-payment of renewal fees: P. & D. Acts, 1907 and 1919, s. 20. Any such order must provide for the protection of persons who have used the invention after the lapse: *ib.* (5).

Patent of addition.

A patent of addition may be granted in respect of improvements in, or modifications of, an original invention for which a patent has been granted or applied for. A patent of addition, when granted, remains in force so long as the patent for the original invention remains in force; no renewal fees are payable in respect of it: s. 19. But if the original patent is revoked, the patent of addition may, on the order of the Court or Comptroller, become an independent patent, for a term not exceeding the unexpired term of the original patent: s. 19 (3). In these circumstances renewal fees become payable: *ib.* The application for a Patent of Addition must be made in respect of an addition to the particular invention for which a particular patent is already held: *Re H. S. J.'s Application* (1914), 31 Rep. Pat. Cas. 47.

Patent of addition on a patent of addition may be granted.

A patent of addition on a patent of addition may be granted in cases where the claims of the first and second patents of addition,

(*ll*) The court has power to apportion any loss or liability arising from this statutory extension of the term as between the parties to a contract made before 19th November, 1917: P. & D. Act, 1919, s. 6 (3).

"Patentee as such."

(*m*) P. & D. Acts, 1907 and 1919, s. 18 (6), proviso; also R. S. C., O. 53A, r. 3A. As to the meaning of Patentee as such, see *Summers Brown's Patent* (1922), 39 Rep. Pat. Cas. 367.

together with the claims of the original patent, could all have been included in the original specification and claims, and a single patent could properly have been granted to cover the whole: *Re McFeely's Application* (1912), 29 Rep. Pat. Cas. 386.

Grant of patent to representative of deceased inventor.

The representative of a deceased inventor may apply for and obtain Letters Patent for the invention: s. 43. He must produce at the patent office the probate of the Will or the letters of administration, or official copies thereof, in proof of his title to be regarded as representative: Patents Rules, 1920, r. 11.

Convention applications.

In convention applications, the representative or assignee may make the application: P. & D. Act, 1914, s. 1; Patents Rules, 1920, r. 15.

Persons under disability.

The representatives of persons under disability may act for them: P. & D. Acts, 1907 and 1919, s. 83.

Grant of patent to corporations.

Letters Patent will not, except first in the case of inventions communicated from abroad, and secondly in the case of convention applications where the foreign patentee is a corporation, be granted to a body corporate alone: P. & D. Acts, 1907 and 1919, s. 91; in all other cases the "true and first inventor" must be joined in the grant: s. 1 (3).

Assignees, joint applicants.

But where an applicant has agreed in writing to assign a patent when granted to another party, or a joint applicant, and refuses to proceed with the application, or disputes arise between joint applicants as to proceeding with an application, the Comptroller may allow such other party or joint applicant to proceed with the application and may grant a patent to him: s. 12 (1), proviso.

Sect. II.—*Registration.*

The register.

A register of patents is kept at the Patent Office containing the names and addresses of grantees, notifications of assignments, and of transmissions of patents and particulars of licences, amendments, extensions, and revocations, and other matters affecting the validity or proprietorship of patents: s. 28.

Register *prima facie* evidence of entries.

The register of patents is *prima facie* evidence of any entries authorised by the Acts.(*n*)

Grantee of patent automatically registered.

Upon the sealing of a patent, the name, address, and nationality of the grantee, the title of the invention, the date of the patent, the date of the grant, and the address for service are entered by the Comptroller in the register: Patents Rules, 1920, r. 86.

(*n*) P. & D. Acts, 1907 and 1919, ss. 28 (3), 71 (1) (2); Patents Rules, 1920, rr. 86–97.

No entry can be made in the register until the Letters Patent have been granted.(*o*)

No notice of trusts may be entered.

No notice of any trust, whether express, implied or constructive, can be entered on the register: P. & D. Acts, 1907 and 1919, s. 66.

Registration of title.

Registration of title is obligatory.(*p*) Where a person becomes entitled by assignment, transmission or other operation of law, to a patent, or acquires an interest in a patent, whether as mortgagee, licensee or otherwise, he must apply to the Comptroller to register his title; on proof of title to the satisfaction of the Comptroller, such person will, in the case of an assignment, be registered as proprietor of the patent: s. 71 (1); in other cases an entry of his interests, appropriate to the particular circumstances, will be made: s. 71 (2); Patents Rules, 1920, r. 92.

Powers of proprietor.

The person registered as the proprietor of a patent has, subject to the provisions of the Acts,(*q*) and to any rights appearing from the register to be vested in any other person, power absolutely to assign, grant licences as to or otherwise deal with the patent, and to give effectual receipts for any consideration for any such assignment, licence, or dealing; but any equities in a patent are enforceable in the same way as equities in respect of other personal property; (*r*) the doctrine of notice with its equitable consequences applies.(*s*)

Equities.

Registration to acquire legal title.

There was some doubt whether, under the P. & D. Act, 1907, an assignee could become the full legal owner before registration; (*t*) but inasmuch as registration of title is now compulsory, *semble*, the full legal title is not acquired until registration.

Evidence.

A registrable document, which has not been registered, is not admissible in evidence in proof of title unless the Court otherwise directs, except in cases of application for rectification of the register by the court: P. & D. Acts, 1907 and 1919, s. 71 (4).

(*o*) As to the registration of documents of earlier date than the date of the grant of Letters Patent, see *Re Parnell's Patent* (1888), 5 Rep. Pat. Cas. 126; and 1910 (E), 27 Rep. Pat. Cas., appendix vi.

(*p*) S. 71. Registration was not compulsory under the repealed s. 71 of the Act of 1907.

Joint grantees.

(*q*) In the case of joint grantees, the legal interest in the patent passes on the death of one to the survivor, but the beneficial interest devolves on the personal representatives of the deceased co-owner: s. 37. The Court has power to vary the register: s. 72.

(*r*) P. & D. Acts, 1907 and 1919, s. 71 (3).

(*s*) *New Ixion Tyre, &c., Co.* v. *Spilsbury* [1898], 2 Ch. 484, 67 L. J. Ch. 557.

(*t*) See *Bowden's, &c., Co.* v. *Herbert Smith & Co.* [1904], 2 Ch. 86, 122; 73 L. J. Ch. 522, 776.

Proceedings in court.

Registration of title should be made as soon as possible, and in any event before commencing proceedings. The registered proprietor is the person entitled to sue, and "equities," in s. 71, of the P. & D. Acts, refer to an unregistered assignee.(*u*) An equitable assignee cannot sue without joining the legal owner.(*v*) Where a plaintiff, who had assigned his patent to a trustee, commenced an action for infringement, and subsequently took a re-assignment of the patent, it was held that inasmuch as he was registered as proprietor at the date of the writ, he was entitled to bring the action.(*u*)

Registration is not notice to all the world.(*w*)

Definition of patentee.

For the purposes of the P. & D. Acts, 1907 and 1919, a patentee is the person for the time being entered on the register as the grantee or proprietor of the patent: s. 93.

Sect. III.—*Co-owners.*

Effect of grant of patent to two or more persons after 1907.

The position of co-owners of letters patent is obscure. In the case of patents granted after 1907 to two or more persons jointly, it is provided, by section thirty-seven of the P. & D. Acts, 1907 and 1919 (Act of 1907, s. 37), that such persons are, unless otherwise specified in the patent, to be treated for the purpose of the devolution of the legal interest as joint tenants and, subject to any contract to the contrary, they are each entitled to use the invention for their own profit, without being liable to account, but one of them cannot grant licences without the consent of the others.

Acquiescence.

Acquiescence may imply consent within the meaning of the section; the same principles which underlie the raising of an equity against a litigant by means of acquiescence are involved when an attempt is made to raise a consent under the section by implication.(*x*)

Devolution of the beneficial interest.

Section thirty-seven further provides that on the death of a joint grantee of a patent, granted after 1907, his beneficial interest in the patent devolves on his personal representatives

(*u*) *Duncan* v. *Locherbie & Wilkinson (Birmingham) Ltd.* (1912), 29 Rep. Pat. Cas. 454, at p. 459.

(*v*) *Bowdens, &c., Co.* v. *Herbert Smith & Co.* [1904], 2 Ch. 86, 122; 73 L. J. Ch. 522, 766.

(*w*) *Heap* v. *Hartley* (1889), 42 Ch. D. 461; 58 L. J. Ch. 790; *Scottish Vacuum Cleaner Co. Ltd.* v. *Provincial Cinematograph Theatres Ltd.* (1915), 32 Rep. Pat. Cas., at p. 360 (a Scottish decision).

(*x*) *Whitehead & Poole, Ltd.* v. *Sir James Farmer & Sons, Ltd.* (1918), 35 Rep. Pat. Cas. 241.

as part of his personal estate. Before the Act of 1907, the beneficial interest in a patent granted to two or more patentees passed to the survivor,(*y*) but the rights of co-grantees to grant licences were undecided.(*z*) In other respects section thirty-seven is declaratory of the law.(*a*)

The statutory provisions above referred to are limited to joint grantees. Assignments of patents by joint grantees and the rights of co-owners who derive title under assignments are not dealt with.

Assignment of share by joint grantee.

Whether a joint grantee can assign his share or part of his share in a patent without the consent of his co-grantees is open to doubt. It is conceived that he cannot do so. One of the results of granting a licence is to exclude the licensee from the prohibition contained in the letters patent against working, &c., the invention. To that extent at least an assignment of a patent has a similar result in favour of the assignee. *Semble*, an assignment by a co-grantee, without the consent of the other grantees, would defeat the provisions in the section relating to licences and would be contrary to their intention.

By joint assignees.

In the case of joint patentees who derive title by assignment, it would seem, in the absence of any indication in the assignment to the contrary, that similar considerations apply as regards the working of the invention, assignments and the granting of licences as in the case of joint grantees: *Re Horsley and Knighton's Patent* (1869), L.R. 8 Eq. 475, but that on death the beneficial as well as the legal interest in the patent passes to the survivor.

Rights of co-owners in common.

In the case of patents held by co-owners, as tenants in common, or part owners, each owner may work the patent for his own benefit, and may retain the profits so made: *Steers* v. *Rogers* [1893], A. C. 232; 62 L. J. Ch. 671; he can assign his share in the patent and can maintain an action for infringement, also he can grant licences relating to his share of the patent, and recover royalties in respect thereof.(*b*)

(*y*) *National Society, &c., of Electricity* v. *Gibbs* [1899], 2 Ch. at p. 299; reversed on appeal on another point [1900], 2 Ch. 280; 68 L. J. Ch. 503; 69, *ib.*, 457.

(*z*) *Mathers* v. *Green* (1866), L. R. 1 Ch. 29; 35 L. J. Ch. 1; *Steers* v. *Rogers* [1893], A. C. 232; 62 L. J. Ch. 671.

(*a*) As to the law before the Act of 1907, see *Mathers* v. *Green*, *supra*, and the case cited in last note but one; see also Frost, 4th ed., Vol. II, p. 156, *et seq.*, and Morris' Patents Conveyancing, 1887, p. 118, *et seq.*

(*b*) *Dunnicliffe* v. *Mallett* (1859), 7 C. B. N. S. 209; *Walton* v. *Lavater* (1859), 8, *ib.*, 162; *Sheehan* v. *G. E. Ry. Co.* (1880), 16 Ch. D. 59; 50 L. J

Inasmuch as each co-owner can sue for infringement, it would seem clear that a licence granted by one co-owner cannot affect the rights of the other so as to preclude him from proceeding against the licensee in respect of any infringement of his share of the patent.(*c*)

Owing to the uncertainty that exists as to the rights of co-owners *inter se*, care should be taken that these are defined in any instrument relating to the ownership, particularly express provisions should be made as to the payment of renewal fees, the granting of licences, the allocation of the royalties or other consideration payable thereunder, and as to the general powers of disposing of the patent.

Provisions should also be inserted with regard to the communication of improvements.

Action for infringement.

All the patentees should, if possible, be made plaintiffs in an action for infringement; in any case they should be made parties to the action.

Rights of co-owners to recover damages.

Where a patent had been assigned to two persons as tenants in common, it was held that the right to recover damages in respect of infringements committed after the assignment, and before the death of one of the co-owners, survived to the other co-owner, who was entitled to recover the whole amount of the damages sustained by him and his late co-assignee.(*d*) Where co-grantees of certain patents, having agreed to assign the patents, agreed that the assignment should contain a covenant by the vendors for validity, and one of the vendors died before the patents had been assigned, it was held that the covenant would have been joint and several, and that the purchaser was entitled to relief against the administratrix of the deceased patentee on that footing in respect of certain patents found to be invalid.(*e*)

Ch. 68; *cf. Turner* v. *Bowman* (1925), 42 Rep. Pat. Cas. 29; *Dent* v. *Turpin* (1861), 2 J. & H. 139; 30 L. J. Ch. 495 (a trade mark case, and therefore not strictly applicable to patents). As to the nature of trade mark rights see Sebastian, Trade Mark Registration, 2nd ed., 1922, p. 4.

(*c*) *Cf. Powell* v. *Head* (1879), 12 Ch. D., at p. 690, where the rights of one co-owner of a dramatic copyright under 3 & 4 Will. IV, c. 15, against a licensee of another co-owner of the copyright were considered; also *Lauri* v. *Renad* [1892], 3 Ch., at p. 413 (another case of dramatic copyright).

(*d*) *Smith* v. *L. & N. W. Ry.* (1853), Macr. Pat. Cas. 203. It may be doubted whether this case is still good law.

(*e*) *National Society, &c., of Electricity* v. *Gibbs* [1900], 2 Ch. 280; 69 L. J. Ch. 457.

Sect. IV.—*Assignments.*

Right to assign.

The right to assign the benefit of Letters Patent is statutory: P. & D. Acts, 1907 and 1919, ss. 14 and 71 (3), and, subject to the rights of the Crown (see ss. 29–30), is absolute. The patent may be assigned for the whole of the United Kingdom, or the assignment may be limited to a particular district: ss. 14 and 71. In prescribed forms of Letters Patent the expression "the Patentee," includes the inventor, "his executors, administrators, and assigns."

Absolute legal assignments must be by deed.

To pass the full legal interest in patents, assignments must be by deed. Equitable assignments of a patent or a share or interest therein may be registered.(*f*) The Court will grant specific performance of a valid contract for the sale of a patent and compel the vendor to execute an assignment; conversely the purchaser may sue for the re-payment of the purchase-money: *Cogent* v. *Gibson* (1864), 33 Beav. 557. *Semble*, an equitable title to patents, which can be enforced, may be obtained by a parol agreement: *Frentzell* v. *Dougill* (1904), 21 Rep. Pat. Cas. 641.

Specific performance of contracts for sale of patents.

Consideration.

Patents may be assigned for any valuable consideration, *e.g.*, the payment of a capital sum or of royalties on articles to be manufactured under the patent. On the sale of a patent in consideration of royalties there is, in the absence of other circumstances, as, for example, bad faith on the part of the assignee, no implied covenant on the part of the assignee to keep the patent on foot by the payment of renewal fees, neither is there any implied obligation on him to manufacture under the patent.(*g*)

No implied covenant to pay renewal fees.

Position of assignee of patent with notice.

An assignee of a patent takes subject to all obligations entered into by former owners with the original patentee of which the assignee has notice, but is not, by reason of such notice, personally liable to carry out the obligations.(*h*) The original patentee has a remedy, analogous to a vendor's lien on the patent, in respect of money due to him, which may be enforced against the owner of the patent for the time being, but this rule does not apply where

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(*f*) *Re Casey's Patents* [1892], 1 Ch. 104; 61 L. J. Ch. 61; P. & D. Acts, ss. 28, 71.

(*g*) *Re Railway, &c., Appliances Co.* (1888), 38 Ch. D. 597; 57 L. J. Ch. 1027.

(*h*) *Bagot, &c. Tyre Co.* v. *Clipper, &c., Tyre Co.* [1902], 1 Ch. 146; 71 L. J. Ch. 158; explaining *Werderman* v. *Société, &c., d'Electricité* (1881), 19 Ch. D. 246.

it is clear that the original patentee intended to rely only upon the personal liability of the first assignee.(*i*)

Assignee of licence.

As the same rule applies between the grantor of a licence and assignees of the licence, licences should not be made assignable except with the grantor's assent.

Death.

On the death of a sole patentee, his interest in the patent passes to his personal representatives. The devolution of a patent on the death of a co-owner has already been considered.

Bankruptcy.

On the bankruptcy of a patentee the patent passes to the trustee or receiver.

Dissolution.

On the dissolution of a limited company, any undisposed patent rights of the company vest in the Crown, but where the beneficial interest does not also so vest, there is no merger and the patent does not cease to exist: *Re Dutton's Patent* (1923), 40 Rep. Pat. Cas. 84. Whether there is merger where the beneficial interest also vests in the Crown, is doubtful. But even if there be a merger, the Crown need not insist on its rights. Where a company was dissolved before having executed an assignment to an intended licensee, the Comptroller was directed by the Board of Trade to register such intended assignee as proprietor of the patent: *Re Taylor's Agreement* [1904], 2 Ch. 737; 73 L. J. Ch. 557.

Non-registration of representation.

The fact that a personal representative has not registered probate or letters of administration, at the date of an assignment by him of a patent, is no ground of objection to the title of the assignee of the patent. *Semble*, such an assignee cannot become the full legal owner of the patent until the representation has been registered.(*j*)

A vesting order under T. Act, 1925, s. 51, may be made in respect of a patent.(*k*)

Sect. V.—*Licences.*

Right to grant licences conferred by Letters Patent.

Letters Patent confer on the patentee the sole right, by himself, his agents or licensees, to make, use, exercise and vend the invention within the realm, and they prohibit others from doing so without his consent, licence or agreement. They further provide that nothing in the patent shall prevent the granting

(*i*) *Dansk, &c., Syndikat* v. *Snell* [1908], 2 Ch. 127; 77 L. J. Ch. 352.
(*j*) *Elwood* v. *Christy* (1864), 17 C. B. N. S. 754; 34 L. J. C. P. 130.
(*k*) *Re Heath's Patent* (1912), 29 Rep. Pat. Cas. 389; *Re Dutton's Patent* (1923), 40 Rep. Pat. Cas. 84.

of licences in such manner and for such consideration as they may by law be granted.(*l*)

A patent has, to all intents, the like effect against the King as it has against a subject: P. & D. Acts, 1907 and 1919, s. 29 (1).

Right of Crown to use patented inventions.

Certain statutory restrictions have been imposed on the monopoly conferred by Letters Patent. Government departments may, by themselves or their agents, if authorised by them in writing, after the patent has been applied for, make, use and exercise the invention for the services of the Crown. This is so, notwithstanding any agreement or licence concluded between the inventor or patentee and any third party.(*m*)

Compensation.

A patentee is entitled to compensation for such Government user. The terms may be settled, with the consent of the Treasury, by agreement with the Government department concerned, or, in default of agreement by the Court.(*n*)

A patentee is not entitled to such compensation where the invention has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, any Government department; unless the invention had been communicated directly or indirectly by the patentee: s. 29 (1), proviso.

Sales by Government of patented articles.

The right of Government departments to sell patented articles made pursuant to their statutory rights is limited to articles no longer required for the services of the Crown: s. 29 (3); but the right of the Crown to sell or use articles forfeited under the laws relating to customs and excise is not affected by the P. & D. Acts: s. 29 (4).

Patents capable of being used for the production of food or medicines.

In the case of patents applied for after the 23rd December, 1919, and intended for or capable of being used for the production of food or medicines, the Comptroller must, on the application of any person and unless he sees good reason to the contrary, grant a licence limited to the use of the invention for the purposes of the preparation or production of food or medicine. The terms of such licence and the compensation to be paid to the

(*l*) See form of Letters Patent: Patents Rules, 1920, Sch. III, also *National Phonograph Co. of Australia* v. *Menck* [1911], A. C. 336; 80 L. J. P. C. 105; 28 Rep. Pat. Cas. 229.

(*m*) P. & D. Acts, 1907 and 1919, s. 29 (1). As to the effect of this section, see First Report of Royal Commission on Awards to Inventors.

(*n*) P. & D. Acts, 1907 and 1919, s. 29 (1) and (2). In the case of user before the 23rd April, 1920, a patentee must proceed under s. 29 of the P. & D. Act, 1907, and the Treasury and not the Court must settle the terms: *Re Hale's Patents* [1920], 2 Ch. 377; 37 Rep. Pat. Cas. 171, see also R. S. C., O. 53A, r. 22.

patentee will be settled and fixed by the Comptroller: P. & D. Acts, 1907 and 1919, s. 38A (2).

Compulsory licences.

Abuse of monopoly rights as defined by P. & D. Acts, 1907 and 1919, s. 27, constitutes a ground for revocation of the patent or for the grant of a compulsory licence, exclusive or otherwise, or for the endorsement of a patent with the words "licences of right."(*nn*) Revocation of a patent under s. 27 may only be ordered when the other remedies thereby provided are inadequate: sub-s. (3) (d).

Revocation of existing licences.

An order for the grant of an exclusive licence operates, unless otherwise specified in the order, to revoke all existing licences: P. & D. Acts, 1907 and 1919, s. 27 (6). The proviso, it is conceived, would enable the Comptroller to order an exclusive licence in respect of part only of the full monopoly rights under the patent, and to curtail the rights of existing licensees to a corresponding extent.

"Licences of Right."

Endorsement at request of patentee.

A patentee may himself procure his patent to be endorsed by the Comptroller with the words "licences of right": s. 24 (*o*); unless he is under agreement not to do so: s. 24 (2) and (3). But the existence of such an agreement will not avail to prevent an order for such an endorsement where there has been an abuse of monopoly rights: s. 27 (3) (a). Every existing licensee at the date of compulsory endorsement may, however, apply for an order entitling him to surrender his licence in exchange for a licence to be settled by the Comptroller. In settling the terms of the substituted licence, the Comptroller may reduce the royalties or other payments accruing to the patentee under the previous licence, in order to secure equality of advantage among the several licensees under a patent endorsed "licences of right": s. 24 (1) (b) (iii).

Compulsory endorsement.

Rights of prior licensees.

Order for licence operates as if embodied in a deed.

Any order by the Comptroller for the grant of a licence operates as if it were embodied in a deed granting a licence executed by the patentee and all other necessary parties: s. 27A.

Effect of endorsement.

The endorsement of a patent with the words "licences of right" entitles any person, as of right, to a licence under the patent upon such terms as, in default of agreement, may be settled by the Comptroller. Where the terms are settled by

Certain terms to be implied.

(*nn*) "Abuse of monopoly rights" is dealt with in Sect. VIII, *infra*.

(*o*) Half the usual renewal fees only are payable as from the date of the endorsement in respect of a patent so endorsed: s. 24 (1) (f).

in licences under endorsed patents.

agreement they are deemed, unless otherwise expressly provided, to include terms—

(i) Precluding the licensee from importing infringing goods; and the patentee and all licensees are deemed to have mutually covenanted against such importation: s. 24 (1) (a) and (c);

(ii) Entitling the licensee to call upon the patentee to take proceedings against infringers, or, if the patentee fails to do so within two months, to institute proceedings in his own name, making the patentee a defendant: s. 24 (1) (d).

Cancellation of endorsement.

The Comptroller has a discretionary power, on the application of the patentee and in the absence of any existing licence, to cancel an endorsement "licences of right," whereupon the patentee's rights and liabilities become the same as if no such endorsement had been made: s. 24 (5).

The absence of any power to cancel the endorsement, while there is any existing licence, places a sole licensee under an endorsed patent, who may wish to obtain an exclusive licence, at a disadvantage. It would appear to be necessary for him first to surrender his licence, to enable the patentee to obtain cancellation of the endorsement and to enter into an agreement with the patentee for an ordinary licence to be granted after the cancellation has been made.

Illegal conditions in a contract.

It is illegal for a patentee to insert certain oppressive conditions in contracts relating to the sale or lease of or licence to use or work a patented article or process: P. & D. Acts, 1907 and 1919, s. 38. These are dealt with in Section VII of this Chapter.

Licences.

Subject to the above statutory restrictions a patentee has a practically unfettered right to grant licences under his patent, and to impose what terms he pleases on his licensees.(*p*)

Classes of licences.

Licences may be exclusive or general (*i.e.*, non-exclusive), or revocable or irrevocable; they may comprise the whole ambit of the patent monopoly, both as regards the invention itself, or the area in which the patent may be worked or the patented article sold; or they may be limited to a particular part of the invention; for instance, the use of a patented process for a specific or limited purpose, or to a particular area or district. A licence may also be granted for the whole term of the patent, including any extended term, or it may be limited to a shorter period.

Limited licences.

(*p*) As to how far conditions may run with patented goods, see the end of this Section.

Where it is desired to limit a licence to a particular article or application of the invention, the limitation should be strictly defined in the licence, if necessary by detailed drawings scheduled to the licence, or by a deposit of an actual example of the article.(*q*)

A licensee who works an invention, otherwise than in accordance with the terms of his licence, renders himself liable to an action for infringement of the patent.(*q*)

Form, &c., of licences.

A licence may arise by express grant or implication. No special form is required; the licence need not be in writing. It will, however, be found desirable in most cases that a licence should be by deed, though this is by no means necessary.

A licence may be granted by deed poll, but unless the licence is intended to be revocable at the will of the grantor this is not advisable.

Revocable.

A mere licence, whether by parol or under seal, even for valuable consideration, is, unless coupled with an interest, revocable at any time.(*r*)

Parol licence.

A parol licence is *prima facie* revocable, but an irrevocable licence may, when coupled with an interest, probably be granted by parol: *Coppin* v. *Lloyd* (1898), 15 Rep. Pat. Cas. 373.

Power to determine.

It is a question of construction whether in any particular case a licence may be determined by either party. Power for the grantor to determine a licence on reasonable notice raises no implication that the licensee is to have a corresponding right to put an end to the licence: *Cutlan* v. *Dawson* (1897), 14 Rep. Pat. Cas. 249.

Exclusive licence may amount to an assignment.

An exclusive licence may amount to an assignment if the grantor parts with the whole of his interest in the patent,(*s*) but an assignee in such circumstances does not acquire the full rights of a patentee unless he secures his registration as the proprietor of the patent.(*t*)

Renewal fees.

In a general or non-exclusive licence the circumstances are usually such that the grantor covenants to pay the patent

(*q*) *Société Anonyme pour la Fabrication, &c.* v. *Midland Lighting Co. Limited* (1897), 14 Rep. Pat. Cas. 419; *Dunlop Pneumatic Tyre Co.* v. *Buckingham & Adams, &c., Co.* (1901), 18 Rep. Pat. Cas. 423.

(*r*) *Wood* v. *Leadbitter* (1845), 13 M. & W. 838; 14 L. J. Ex. 161; see also *Guyot* v. *Thompson* [1894], 3 Ch. 388; 64 L. J. Ch. 32; *Redges* v. *Mulliner* (1893), 10 Rep. Pat. Cas. 21.

(*s*) See *Heap* v. *Hartley* (1889), 42 Ch. D. 461; 58 L. J. Ch. 790; 6 Rep. Pat. Cas. 495; and *British Assocn. of Glass Bottle Manuf. Ltd.* v. *Forster & Sons, Ltd.* (1917), 34 Rep. Pat. Cas., at pp. 82, 226.

(*t*) P. & D. Acts, 1907 and 1919, s. 71 (3).

renewal fees, but in an exclusive licence the licensee frequently covenants to pay the whole or some proportion of them.

In the absence of special circumstances there is no implied covenant either on the part of the grantor or of the licensee to pay renewal fees; but such a covenant may be implied from the terms of the licence. The grant of a licence to work under a patent for a fixed term, has been held, in an Irish case, to carry with it an obligation on the part of the grantor to maintain the patent; *semble*, there is a *prima facie* liability on the grantor of such a licence, if he be also the patentee, to pay the renewal fees.(*u*)

Covenant to defend.

A licensor who has covenanted "at all times during the continuance of the agreement, at his own costs and charges, by all means in his power, to protect and defend the patent from all infringements," is bound to maintain the patent and keep it alive.(*v*) But a licensee who covenants to pay a royalty on all articles manufactured or sold under the patent, while the licence or patent is subsisting, is not, it seems, in the absence of express provision, bound to pay renewal fees or keep the patent on foot; or, in the absence of an express covenant, to work the patent.(*w*)

Non-execution.

A licensee who has taken the benefit of a licence under seal, containing a covenant to pay royalties, is bound by such covenant, even though he has not executed the deed; such royalties will be treated as specialty debts: *Sadgrove* v. *Godfrey* (1920), 37 Rep. Pat. Cas., at p. 22.

Position between licensor and licensee.

So long as the relationship of licensor and licensee exists, a licensee is estopped from denying the validity of the patent under which the licence was granted: *Mills* v. *Carson* (1893), 10 Rep. Pat. Cas. 9. If, however, the terms of the licence entitle the licensee to put an end to it he may determine the licence and thereafter he stands unfettered in his right to question the validity of the patent: *Redges* v. *Mulliner* (1893), 10 Rep. Pat. Cas. 21. A licensee may always dispute the ambit of the claims of the patent and show that the acts complained of are not within the scope of the patent monopoly: *Clark* v. *Adie* (1877), 2 A. C. 423; 46 L. J. Ch. 598. The fact that the patent has been declared invalid in proceedings between the patentee and a third party does not relieve a licensee from an obligation to pay

Invalidity.

(*u*) *Cummings* v. *Stewart* (1913), 30 Rep. Pat. Cas. 1; *Mills* v. *Carson* (1893), 10 Rep. Pat. Cas. 9.

(*v*) *Lines* v. *Usher* (1897), 14 Rep. Pat. Cas. 206; see also *Cummings* v. *Stewart*, *supra*.

(*w*) *Re Railway, &c., Appliances Co.* (1888), 38 Ch. D. 597; 57 L. J. Ch. 1027.

royalties; indeed, a licensee may in some cases be bound under the terms of his licence to continue to pay royalties, notwithstanding that the patent has been cancelled or revoked.(*x*)

Power to determine.

He may, however, be able to call in aid the P. & D. Acts, 1907 and 1919, s. 38 (2), and determine the licence on payment of compensation to the grantor; see *infra*, Section VII.

On the other hand, where the grantor is under an obligation to pay the renewal fees, royalties paid by the licensee after the patent has lapsed may be recovered: *Lines* v. *Usher* (1897), 14 Rep. Pat. Cas. 206.

Foreign rights.

A licence granted by the owner of English and foreign patents to manufacture abroad under the foreign patents gives the licensee no right to sell the articles in this country.(*y*)

Non-assignable licence.

A mere licence to work a patent is not assignable unless a right to do so is expressed or can be implied from the terms of the licence, but if a licensor acquiesces in a purported assignment, or accepts royalties from the assignee, he will be estopped from disputing the validity thereof: *Lawson* v. *Donald MacPherson & Co.* (1897), 14 Rep. Pat. Cas. 696.

Licence to person "and his assigns."

The effect of granting a licence to "A. and his assigns" is to license all whom A. may license: *Bower* v. *Hodges* (1853), 22 L. J. C. P. 194.

An assignor of a licence is not entitled, as against his assignee, to dispute the validity of the patent: *Gonville* v. *Hay* [1904], 21 Rep. Pat. Cas. 49.

Specific performance.

An agreement to take a licence may be specifically enforced by the intended grantor: *Brake* v. *Radermacher* (1903), 20 Rep. Pat. Cas. 631.

The provisions of P. & D. Acts, 1907 and 1919, s. 32A,(*z*) should be carefully considered when framing the terms of licences, particularly as regards the royalty clauses.

Invalid claims under old law.

Before the Act of 1919 no relief could be obtained under a patent containing an invalid claim. Damages were, however, recoverable in actions brought upon amended patents, in respect of infringements committed before the amendment, if the patentee proved that the claim, in the un-amended specification, had been

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(*x*) *The African Gold Recovery Co. Ltd.* v. *The Sheba Mining Co.* (1897), 14 Rep. Pat. Cas. 660.

(*y*) *Société, &c., de Glaces* v. *Tilghmans, &c., Co.* (1883), 25 Ch. D. 1; 53 L. J. Ch. 1.

(*z*) This section was introduced into the Act of 1907 by P. & D. Act, 1919, s. 9.

Amended specification.

framed in good faith and with reasonable skill and knowledge: P. & D. Act, 1907, s. 23. Leave to amend a specification could be granted by the Court while an action for infringement was pending: s. 22, and R.S.C., O. 53A, r. 23. In such a case, it was the almost invariable rule that terms were imposed precluding the patentee from obtaining relief in respect of infringements committed before the amendment.(*zz*)

P. & D. Act, 1907, ss. 22 and 23, are now (with slight amendments made by the Act of 1919) reproduced by the P. & D. Acts, 1907 and 1919, ss. 22 and 23, but their effect has been substantially modified by P. & D. Acts, 1907 and 1919, s. 32A.

Power for Court to grant relief.

This section provides that if the Court, in any action for infringement of a patent, finds that any one or more of the claims in respect of which infringement is alleged are valid, it must, subject to a discretion as to costs and the date from which damages should be reckoned, and also as to the imposition of terms as to amendment of the patent, grant relief in respect of the valid claims which are infringed, without regard to the invalidity of any other claim.

Semble, the real nature of the change in the law effected by this section is not to create new rights, but to create a change in procedure, by enabling a patentee to obtain relief without the need of first curing defective claims in his patent.

Adjudication on claims.

By s. 35 of the Acts,(*a*) the Court may, in an action for infringement, certify the validity of any claim called in question; in any subsequent action for infringement of such claim, the plaintiff is entitled to solicitor and client costs, unless the Court trying the action otherwise directs.

The combined effect of these two sections, and of s. 25 of the Acts, which deals with the revocation of patents, is obscure and has not yet received judicial interpretation.(*b*) *Semble*, though it is still the case that a patent containing an invalid claim is itself invalid and liable to be revoked, yet a patentee is entitled (to the extent of restraining infringements of his valid claims)

Right to rely on claims.

(*zz*) *Hopkinson* v. *St. James', &c., Electric Light Co.* (1893), 10 Rep. Pat. Cas. 46, apparently gives the only reported exception to this rule. As to the law before the P. & D. Act, 1907, see *Lucas' Patent* (1854), Macr. Pat. Cas. 234; *Lang* v. *Whitecross Wire, &c., Co.* (1890), 7 Rep. Pat. Cas.389.

(*a*) P. & D. Act, 1907, s. 35, as amended by P. & D. Act, 1919, s. 20.

(*b*) For an argument on the effect of s. 32A, see *Hale* v. *Coombes* (in the House of Lords) (1925), 42 Rep. Pat. Cas. 328, where an appeal, against a declaration that a patent was valid, was dismissed, though certain claims in the patent were held by Dom. Proc. to be invalid.

to rely on his valid claims, as if they had been the subject of an independent grant of monopoly rights.

Partial failure of the patent.

In the case of a licence to manufacture under a patent covering, for example, a machine, it may well happen that certain of the narrower claims in the patent, which effectively cover the particular article which the licensee desires to manufacture, may be held to be valid, while some of the broader claims, covering the general principle of the machine, may be held to be invalid. In such circumstances, the protection afforded to the licensee by the patent against competitors might be diminished and the value of the licence to him seriously reduced. In the interests of the licensee, particularly in the case of an exclusive licence, it would seem desirable that some provision should be made in the licence to meet a contingency such as that indicated.

Provision for protecting licensee.

The simplest method would be to insert a provision for a reduction of the royalties in the event of certain specified claims in the patent being declared invalid. The provision, sometimes inserted in licences, that royalties should cease if the patent was declared invalid is not apt, in view of the provisions of s. 32A of the Acts.

Protection of patentee.

In the interests of the patentee care should be taken to avoid the insertion of clauses which would deprive him of royalties if some only of the claims effectively covering the manufactured article were declared invalid. It is a matter for agreement what reduction of royalties should be made in the event of any one or more of the claims being declared invalid.

Conditions attached to patented articles.

Conditions cannot be attached to ordinary chattels so as to run with them and bind all persons into whose hands they may come.(*c*) Patented articles differ somewhat from ordinary chattels. The presumption on the sale of a patented article is that the full rights of ownership are intended to be vested in the purchaser. Where patented articles are sold by the patentee himself, there is an implied licence to the purchaser to use and dispose of them as he pleases. A patentee may, however, by virtue of his statutory monopoly, impose conditions restricting the complete enjoyment of the patented article. Such conditions are enforceable against a purchaser if they are known to him at the time of the sale. This is so whether the purchase was made direct from the patentee himself or from a licensee or sub-licensee.(*d*) Such a purchaser is practically in the position of a

(*c*) *Taddy* v. *Sterious* [1904], 1 Ch. at p. 358 ; 73 L. J. Ch. 191 ; *McGruther* v. *Pitcher* [1904], 2 Ch. 306 ; 73 L. J. Ch. 653.

(*d*) *National Phonograph Co. of Australia* v. *Menck* [1911], A. C. 336 ; 80 L. J. P. C. 105 ; *Columbia Graphophone Ltd.* v. *Murray* (1922), 39 Rep. Pat.

limited licensee. It is conceived that the same considerations apply where the patented article has been acquired otherwise than by purchase.

User in excess of limits, without notice.

In view of the decision in *National Phonograph Coy. of Australia* v. *Menck* [1911], A. C. 336; 80 L. J. P. C. 105, *semble*, the dictum in *Badische Anilin und Soda Fabrik* v, *Isler*,(*e*) to the effect that if a person innocently buys a patented invention from a licensee, and uses it, not knowing that there are limits on the licence, he is an infringer, needs some qualification. It is conceived that in such case the patentee will, *prima facie*, be estopped from alleging, as against the purchaser, that there were restrictive conditions attaching to the article. A qualification of this character is indicated, but not expressly stated in the judgment.

Sect. VI.—*Mortgages.*

Registration of mortgagee. Mortgagee cannot sue infringers, but mortgagor can.

A mortgagee will be entered on the register as mortgagee and not as proprietor: he cannot, where so entered, sue infringers.(*f*) The mortgagor, however, can sue infringers in his own name without making the mortgagee a party to the action: *ib.*

Amendment of patent where patent mortgaged.

It is doubtful whether a mortgagor can amend his specification without the leave of the mortgagee, but it is advisable to insert in mortgages an express covenant by the mortgagor not to amend or seek leave to amend without the consent of the mortgagee, so as to avoid any possibility of the mortgagor disclaiming a valuable part of the mortgaged patent, and so render the security practically worthless.

Mortgagee in possession bound to account to mortgagor.

A mortgagee in possession of a patent who has granted licences is bound to account to the mortgagor for the profits made by him while in possession. Where the assignee of a moiety of a patent mortgaged his share to the assignee of the other moiety, the mortgagee was held not to be bound to account for the profits derived from the mortgaged share, on the ground that as absolute owner of one moiety he was entitled to use the invention for his own benefit.(*g*)

Cas. 239; *Columbia, &c.* v. *Thoms* (1924) 41 Rep. Pat. Cas. 294; see also *Columbia Phonograph Co. General* v. *Regent Fittings Co.* (1913), 30 Rep. Pat. Cas. 484.

(*e*) [1906], 1 Ch. 605; 2 Ch. 443; 75 L. J. Ch. 411; *ib.*, 749.

(*f*) *Van Gelder, &c., Co.*, v. *Sowerby Bridge, &c., Socy.* (1890), 44 Ch. D. 374; 59 L. J. Ch. 583.

(*g*) *Steers* v. *Rogers* [1893], A. C. 232; 62 L. J. Ch. 671, approving the decision in *Mathers* v. *Green* (1866), L. R. 1 Ch. 27; 35 L. J. Ch. 1; see also P. & D. Acts, s. 37.

Grant of licences by mortgagor.

The powers of a mortgagor of a patent, while in possession, to grant licences are analogous to those of a mortgagor of land in regard to leases under the general law before 1882.(*h*)

The licensee in such a case is estopped from denying the title of the mortgagor to grant the licence, but it would appear that the licence would be defeasible at the instance of a mortgagee who subsequently took possession.

By mortgagee.

The same considerations apply with regard to licences granted by a mortgagee in possession. To make licences binding on all parties the mortgagor and mortgagee must join in the licence.

Semble, a mortgagee in possession can by himself grant a licence binding on the mortgagor "in order to avoid an apparent loss and merely in necessity."(*i*)

Sect. VII.—*Restrictive Provisions.*(*j*)

Certain oppressive clauses made illegal by Patents and Designs Act, 1907, s. 38.

Before the Act of 1907 patentees were able, by the introduction of oppressive clauses in licences granted by them, practically to extend the monopoly given them by their Letters Patent. This practice frequently inflicted hardship on licensees, and is now restricted by s. 38. Care should be taken that the requirements of this section are complied with. This section does not avoid the contract, but only the objectionable conditions. Sub-section (1) makes it illegal to insert, in contracts relating to the sale or lease of or license to use or work a patented article or process, conditions—

Avoidance of certain conditions attached to the sale, &c., of patented articles,

(i) prohibiting or restricting the use of any article, whether patented or not, or any patented process supplied or owned by any person other than the owner of the patent rights or his nominees; or

(ii) requiring the purchaser, &c., to acquire from such owner any article or class of articles not protected by the patent.

unless seller, &c., proves that purchaser, &c., had the option to contract without the

Such clauses are void, as being in restraint of trade and contrary to public policy: s. 38 (1); unless—

(i) "the seller, lessor, or licensor" proves that at the time the contract was entered into the purchaser, lessee or licensee had the option of purchasing the article or

Old law.

(*h*) See Morris' Patents Conveyancing, 1884, p. 129. As to a lease by a mortgagor of land before 1882, see *Cuthbertson* v. *Irving* (1860), 6 H. & N. 135; 29 L. J. Ex. 485; see also Coote on Mortgages, 8th ed., p. 695, *et seq.*

(*i*) See Coote, 8th ed., 825; *Hungerford* v. *Clay* (1722), 9 Mod. 1.

(*j*) As to the effect of restrictive conditions attached to patented articles, see Sect. V, *supra*.

obtaining a lease or licence on reasonable terms without such conditions : s. 38 (1) (i) ; and

(ii) the contract entitled the purchaser, lessee or licensee to relieve himself of the liability to observe any such condition on giving three months' notice in writing and on payment of compensation for such relief : s. 38 (1) (ii).

objectionable conditions, and unless the purchaser, &c., may extinguish objectionable conditions on notice.

A purchaser, lessee or licensee, is not, by reason of any admission made by him, estopped from alleging that the terms on which he had the option of purchasing the article or obtaining a lease or licence were not reasonable : introduced into s. 38 (1) (i) of the Act of 1907, by s. 20 of the Act of 1919.

Certain contracts may be determined on notice after patents have ceased to be in force ; in the case of such contracts made before 28th August, 1907, on payment of compensation.

Sub-section (2) provides that contracts relating to the lease of or license to use or work any patented article or patented process, whether made before or after the passing of the Act of 1907, may, at any time after the patent or all the patents by which the article or process was protected (*i.e.*, described, specified and claimed : *Sarason* v. *Frenay* (1914), 31 Rep. Pat. Cas. 252 ; 330), at the time of making the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing, but in the case of contracts made before the 28th August, 1907, subject to payment of compensation by the party giving the notice.

Any such last-mentioned contract containing conditions rendered void by this section may, notwithstanding anything in the same or any other contract to the contrary, be similarly determined on payment of compensation.

Void conditions available as a defence in infringement actions.

The insertion by the patentee in a contract made after 28th August, 1907, of any condition rendered void under section thirty-eight is available as a defence to an action, for infringement of the patent to which the contract relates, brought while that contract is in force : s. 38 (4). This defence is available in an action brought against a third party, who is not a party to the contract containing the objectionable provisions : *Sarason* v. *Frenay, supra.* But, in an action brought after the contract has been determined, damages may be recovered in respect of infringements that took place while the contract was in force.(*k*)

Conditions excepted from s. 38.

Conditions may, however, be inserted in contracts prohibiting the sale of any goods, other than those of a particular person,

(*k*) *Aktien Gesellschaft fur A. A. S.* v. *London Aluminium Co.* (No. 2) (1923), 40 Rep. Pat. Cas. 107.

and also conditions reserving to the lessor or licensor or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair : s. 38 (5) (d).

Conditions attached by the patentee to the purchase, hire, licence or use of a patented article which unfairly prejudice any trade or industry in the United Kingdom, or any person or class of persons engaged therein, constitute an abuse of monopoly rights within the meaning of the P. & D. Acts, 1907 and 1919, s. 27 : See Monopoly Rights, next Section.

In view of the provisions of s. 38 a clause in the terms of sub-s. (1) (ii) should now be inserted in all contracts and licences coming within the provisions of sub-s. (1), and a recital should also be inserted in all such contracts and licences to the effect that the seller, &c., has performed his obligation under this section. This, it is conceived, will assist in shifting the burden of proof (which under the section rests on the seller, &c.) on to the purchaser, &c. The provisions of sub-s. (2) should also be noted when considering the terms on which a licensee is to get the benefit of patented improvements.

Sect. VIII.—*Abuse of Monopoly Rights.*

The statutory provisions relating to the abuse of monopoly rights are now contained in P. & D. Acts, 1907 and 1919, ss. 27, 38 and 93.

Law before 1908.

Before 1908 there was no obligation on a patentee to work his invention in this country : *Badische, &c., Fabrik* v. *Thomson* (1904), 21 Rep. Pat. Cas. 473 ; hence he could manufacture under the patent abroad and use his monopoly to prevent or hinder manufacture in this country to the detriment of trade, and against the interests of the public.

Changes introduced by P. & D. Act, 1907. Revocation of patents worked outside U.K.

This practice was met to some extent by the P. & D. Act, 1907. Section 27 of that Act provided that, under certain conditions, the Comptroller of patents might order a patent to be revoked on the ground that the patented article or process was manufactured or carried on exclusively or mainly abroad. An order for revocation could not be made, however, if the patentee proved that the patented article or process was manufactured or carried on to an adequate extent in the United Kingdom, or gave satisfactory reasons why such article or process was not so manufactured or carried on. The section was interpreted

broadly,(*n*) and in considering whether a case was a proper one for revocation it was held that the Court must look primarily to the interests of the public: *Re Taylor's Patent* [1912], 1 Ch. 635; 81 L. J. Ch. 438.

The patentee was bound to make efforts in good faith to start manufacturing in this country, and thus to create a demand for the patented article,(*o*) but the manufacture of the patented article by infringers in this country had to be taken into account in his favour.(*p*)

Compulsory licences.

The interests of the public were specifically dealt with by the Act of 1907, s. 24, which was repealed (for substituted provisions, see *infra*) by the Act of 1919.(*q*) Under this section, the Court had power, if it were proved that "the reasonable requirements of the public with reference to the patented invention had not been satisfied," to order the patentee to grant licences on such terms as the Court might think just. If the Court were of opinion that the reasonable requirements of the public would not be satisfied by the grant of licences, an order could be made for the revocation of the patent.

Requirements of the public.

The reasonable requirements of the public were, by P. & D. Act, 1907, s. 24 (5), to be deemed not to have been satisfied if the patentee failed to manufacture to an adequate extent, and supply on reasonable terms the patented article or any necessary parts thereof, or to grant licences on reasonable terms, or if any new trade or industry in the United Kingdom was unfairly prejudiced, whether by conditions attached by the patentee to the purchase, hire or use of the patented article, or otherwise by some act of the patentee, or if the demand for the patented article was not reasonably met.

Present law. P. & D. Acts, 1907 and 1919, ss. 24 and 27.

Sections 24 and 27 of the Act of 1907 were repealed by the P. & D. Act, 1919 (ss. 2 and 1 respectively), and new sections were substituted for them. The new sections are now ss. 24 and 27 of the P. & D. Acts, 1907 and 1919.(*r*)

(*n*) See *Re Hatschek's Patent* (1909), 26 Rep. Pat. Cas. 228; [1909], 2 Ch. 68; 78 L. J. Ch. 403; and *Re Robin Electric Lamp Co.'s Petition* (1915), 32 Rep. Pat. Cas. 202; [1915], 1 Ch. 780. See also The Comptroller-General's decision in *Re Wardwell's Patent* (1915), 32 Rep. Pat. Cas., at p. 91.

(*o*) See *Re Boult's Patent* (1909), 26 Rep. Pat. Cas. 383; *Re Bremer's Patent* (1909), 26 Rep. Pat. Cas. 449; [1909], 2 Ch. 217; 78 L. J. Ch. 550.

(*p*) *Re Fiat Motors, Ltd.* (1911), 27 Rep. Pat. Cas. 762; [1911], 1 Ch. 66; 80 L. J. Ch. 48.

(*q*) See *Re Robin Electric Lamp Co.'s Petition, supra.*

(*r*) These two sections were brought into operation on the 1st April, 1920: S. R. & O., 1920, No. 413, dated 15th March, 1920.

Section 24, which deals with "licences of right," has already been considered. See Sect. V, *supra.*

Section 27 deals comprehensively with the remedies of the public against the abuse of monopoly rights by a patentee and embodies, with important additions, the provisions relating to the grant of compulsory licences previously contained in s. 24 of the Act of 1907.

Abuse of monopoly rights.

Application for relief.

Any person interested and alleging that there has been an abuse of monopoly rights under a patent may now apply to the Comptroller for relief.(*s*) An applicant must satisfy the Comptroller that he has a *bona fide* interest and must make out a *prima facie* case for relief: s. 27 (8). In determining whether there has been any such abuse, it is to be taken that patents for new inventions are granted, not only to encourage invention, but to secure that new inventions shall, so far as possible, be worked on a commercial scale in the United Kingdom without undue delay: proviso to sub-s. (5). "Working on a commercial scale" means the manufacture of the patented article or the carrying on of the patented process in or by means of a definite and substantial establishment or organisation, and on a scale which is adequate and reasonable under all the circumstances.(*t*)

Working on commercial scale.

What constitutes abuse of monopoly of rights.

The circumstances in which the monopoly rights under a patent are to be deemed to be abused are shortly—

(i) If at any time after the expiration of four years from the date of the patent, the patented invention (being one capable of being worked in the United Kingdom) is not being so worked and no satisfactory reasons can be given for such non-working: P. & D. Acts, 1907 and 1919, s. 27 (2) (a);

(ii) If working within the United Kingdom on a commercial scale is being prevented or hindered by the importation from abroad of the patented article, either directly or indirectly by the patentee, or by infringers against whom the patentee has taken no proceedings for infringement; (*u*)

(iii) If the demand for the patented article in the United Kingdom is not being met to an adequate extent and on reasonable terms: sub-s. (2) (c);

(*s*) P. & D. Acts, 1907 and 1919, s. 27 (1). For procedure, see sub-ss. (7)–(12) and Patents Rules, 1920, rr. 79–84.

(*t*) Section 93. For the purposes of s. 27 "patented article" includes articles made by a patented process: s. 27 (13). "Patented article."

(*u*) Sub-section (2) (b), and see last note.

(iv) If by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of the United Kingdom (or of any persons or class of persons trading in the United Kingdom), or the establishment of a new trade or industry in the United Kingdom, is prejudiced, and it is in the public interest that a licence should be granted : sub-s. (2) (d) ;

(v) If any trade or industry in the United Kingdom or any person or class of persons engaged therein is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire, license or use of the patented article, &c. : P. & D. Acts, 1907 and 1919, s. 27 (2) (e), and see s. 38.

Relief obtainable.

On being satisfied that a case of abuse of monopoly rights under a patent has been established, the Comptroller may in his discretion and subject to appeal to the Court : s. 27 (11)—

(i) Order the patent to be endorsed with the words " licences of right " : s. 27 (3) (a) ; and see s. 24 and Sect. V, *supra* ;

(ii) Order the grant to the applicant of a licence on such terms as he may think expedient, being guided by the same considerations as those applicable in the case of a licence settled by him under the provisions of s. 24 : s. 27 (3) (b) ;

(iii) In certain circumstances order the grant of an exclusive licence,(*v*) preference being given to an existing licensee : sub-s. (5). An order granting an exclusive licence operates to deprive the patentee of any right he may have as patentee to work or use the invention, and to revoke all existing licences unless otherwise provided in the order ; but the Comptroller may make it a condition that the new exclusive licensee compensates the patentee or any existing licensee for money or labour expended by them in developing or exploiting the invention : sub-s. (6) ;

(iv) If the objects of the section cannot be attained by the exercise of any of these powers, order the patent to be revoked, provided that the operation of the order may be suspended to enable the patentee to remedy the abuse ; (*w*) or

(*v*) Section 27 (3) (c). As to the terms of such exclusive licence, see sub-ss. (4) and (6).

(*w*) Sub-section (3) (d). No order for revocation can be made which is at variance with any treaty, &c., with any foreign country or British possession.

(v) He may refuse the application and make no order: sub-s. (3) (e).

Sect. IX.—*Stamps.*

Stamps on assignments and licences under patents.

Assignments of patents and of licences to exercise an invention are property within the meaning of the Stamp Act, 1891, s. 59, as amended by the Revenue Act, 1909, s. 7,(*x*) and are chargeable with *ad valorem* stamp duty under the Stamp Act, 1891, and the Fin. (1909-10) Act, 1910, s. 73.

Colonial and foreign rights.

Patent rights in foreign countries and the colonies are not "property locally situated out of the United Kingdom" within the exception in the Stamp Act, 1891, hence an agreement for sale of such rights made in this country is liable to *ad valorem* conveyance duty.(*y*)

Agreements; deeds.

A mere licence to exercise an invention does not require a stamp unless it amounts to an agreement,(*z*) but in the latter case it must be stamped as any other agreement. A licence by deed requires a 10*s.* stamp in addition to any other duty payable in respect of it. Where the consideration or part of the consideration for a licence or assignment is a fixed minimum royalty or annual sum, *ad valorem* duty must be paid on the total value of such royalties or sums.

Covenant duty.

Where a licence is revocable by the grantor, bond or covenant duty and not conveyance duty is, in practice, demanded, and it is conceived that where a licence under seal is terminable by either party, only a 10*s.* deed stamp is required.

Conveyance duty.

It is conceived that *ad valorem* conveyance duty is only properly chargeable in respect of licences when the licence amounts to an assignment.

Exclusive licence.

Semble, an exclusive licence may not be a conveyance within the meaning of the L. P. Act, 1925: *Cf. Guyot* v. *Thomson* [1894], 3 Ch. 388; 64 L. J. Ch. 32.

Where there is a proviso for revocation on non-payment of minimum royalties the clause requiring payment of those royalties does not amount to an absolute covenant to pay: see note to Form No. 61, *infra*.

(*x*) *Smelting Co. of Australia* v. *I. R. C.* [1897], 1 Q. B. 175; 66 L. J. Q. B. 137.

(*y*) *Urban* v. *I. R. C.* (1913), 29 T. L. R. 476, following *Smelting Co. of Australia* v. *I. R. C.*, *supra*; and deciding that the latter case was not overruled by *I. R. C.* v. *Muller* [1901], A. C. 217; 70 L. J. K. B. 677.

(*z*) *Wilson* v. *Union Oil Mills Co.* (1892), 9 Rep. Pat. Cas., at p. 62.

DIVISION VII.

INSTRUMENTS RELATING TO PATENTS.

PART I.

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[*The Forms and Precedents relating to Patents have been revised by* JULIAN Q. HENRIQUES, Esq., *of The Inner Temple, Barrister-at-Law.*]

SECTION I.

Recitals.

No. 1.

Grant of patent to Vendor [Grantor].

LETTERS Patent, under the seal of the Patent Office, dated (*a*) the —— day of ——, 19—, and numbered —— for an invention of —— (*title of invention*), were granted to —— [*or* the Vendor *or* Grantor] his executors, administrators and assigns for the United Kingdom of Great Britain [Ireland] (*b*) and the Isle of Man for the term of sixteen years [fourteen years, which term is now extended to sixteen years under the provisions of the

(*a*) The date of a patent is the date of the application: P. & D. Acts, 1907 and 1919, s. 13. In the case of a patent granted under International Convention the date is the date of the application for protection in the foreign State: *ib.*, s. 91 (1).

Irish Free State.

(*b*) Ireland is still included in Letters Patent, but its inclusion, so far as the Irish Free State is concerned, is of doubtful effect, see Chap. V, Sect. I, *supra.*

Patents and Designs Act, 1919,] from the date thereof and subject to the conditions and provisions therein contained.(*c*)

No. 2.

Grant of patent of addition to Vendor [Grantor, &c.].

A PATENT of Addition to the said Letters Patent, dated the —— day of ——, 19—, and numbered ——, for an invention of —— (*title of invention*), was granted to the Vendor [Grantor], his executors, administrators and assigns for the United Kingdom of Great Britain [Ireland] and the Isle of Man [for the term of —— years from the —— day of ——, 19—, and] subject to the provisions and conditions therein contained.

No. 3.

Previous assignment where Vendor is the Assignee of the original patentee.

BY an Assignment, duly registered at the Patent Office, dated, &c., and made between the said ——, of the one part, and the Vendor, of the other part, the said —— assigned unto the Vendor absolutely the said invention and Letters Patent [including the said Patent of Addition] and all rights therein or in any extension or prolongation thereof.

No. 4.

Vendor registered as proprietor.

THE Vendor [Grantor] is registered as the proprietor (*d*) of the said Letters Patent [and Patent of Addition] [Letters Patent, numbered —— and dated the —— day of ——, 19—, for —— (*title of invention*) [and of a Patent of Addition thereto dated —— and numbered, &c.]].

No. 5.

Title to foreign patents.

THE Vendor [Grantor] is the owner of the brevet d'invention (*e*) and the other foreign patents and patent rights mentioned in the Schedule hereto granted in respect of the said invention.

No. 6.

Previous grant of licence.

BY a Licence, duly registered at the Patent Office, dated the —— day of ——, 19—, and made between the Vendor [Grantor], of the one part, and ——, of the other part, the Vendor [Grantor] granted unto the said ——, and the persons deriving title under him, the full sole and exclusive licence under the said Letters Patent [*or*. Letters Patent, numbered ——, and dated the —— day of ——, 19—, for —— (*title of invention*)] to [make] use [and] exercise [and vend] the invention comprised therein for the residue of the term thereof [at the royalties and] subject to the covenants and conditions mentioned in the said Licence.

No. 7.

Agreement to grant licence.

THE Grantor has agreed to grant to the Licensee the [full]

(*c*) Before 23rd December, 1919, patents were granted for fourteen years. Such patents have effect as if granted for sixteen years: P. & D. Act, 1919, s. 6 (2) and (3), see Chap. V, Sect. I, *supra*.

(*d*) See P. & D. Acts, 1907 and 1919, s. 71 (3).

(*e*) In France patent rights are conferred by a brevet d'invention. For information relating to foreign patents generally, see "Patent Laws of the World," issued by the Chartered Institute of Patent Agents.

Foreign patents.

[sole and exclusive] licence hereinafter mentioned for the consideration and upon the terms hereinafter appearing.

No. 8. Agreement for sale of patent.

THE Vendor has agreed to sell to the Purchaser the full benefit of the said invention and Letters Patent [including the said Patent of Addition] for the consideration and upon the terms hereinafter appearing.

No. 9. Article, &c., to which licence is limited.

FOR the purpose of identifying the article to be manufactured [sold] [defining the manner in which the said invention may be used] by the Licensee under the licence hereinafter mentioned, a sample of —— (*the patented article or the article manufactured by a patented machine or under a patented process*) (hereinafter called "the deposited sample") has been deposited with —— (*the solicitor of the Grantor*).(*f*)

No. 10. Alternative to last form.

IT has been agreed that the licence hereinafter mentioned shall be limited to the use [manufacture] [sale] of —— (*the patented article*) in accordance with the description and drawings set out in the —— schedule hereto.

No. 11. Previous offer to sell, &c., without conditions voidable under P. & D. Acts, 1907 and 1919, s. 38.(*g*)

ON or before entering into the said agreement the Vendor [Lessor *or* Grantor] offered to sell [lease] [grant a licence in respect of] —— (*the patented article*) to the Purchaser upon certain terms and subject to certain conditions (none of which terms or conditions prohibited or restricted the Purchaser [Lessee] [Licensee] from using any class of article or patented process supplied or owned by any person other than the Vendor [Lessor] [Grantor] or his nominees, or required the Purchaser [Lessee] [Licensee] to acquire from the Vendor [Lessor] [Grantor] any article or class of article not protected by the said Letters Patent) [*or*, upon the terms and subject to the conditions mentioned in the —— Schedule hereto]. (*Add the next form.*)

No. 12. Purchaser, &c., not desirous of accepting previous offer and agreement

THE Purchaser [Lessee *or* Licensee] is satisfied that such terms and conditions were reasonable (*h*) but is not desirous of purchasing [taking a lease of] [obtaining a licence in respect of] —— (*the patented article*) upon such terms or subject to such conditions and has agreed to purchase [take a lease of, *or*, licence

(*f*) Limitations in a licence must be strictly defined: *Dunlop Pneumatic Tyre Co. Ltd.* v. *Buckingham & Adams Cycle & Motor Co. Ltd.* (1901), 18 Rep. Pat. Cas. 423.

(*g*) This Form is for use with Form No. 65, *infra*, and is only to be used in contracts, &c., coming within the provisions of P. & D. Acts, 1907 and 1919, s. 38.

(*h*) This Form is for use with the last Form. A purchaser, &c., will not be estopped by this recital from subsequently disputing the reasonableness of the terms: P. & D. Acts, 1907 and 1919, s. 38 (1), proviso.

in respect of] the said —— (*patented article*) upon the terms and subject to the conditions hereinafter appearing.

to purchase subject to conditions.

Section II.

Grants.

No. 13.

Pursuant to the said agreement and in consideration of the royalties hereby reserved and of the covenants herein contained, the Grantor, As Beneficial Owner,(*i*) hereby grants to the Licensee [his executors, administrators, and assigns],(*j*) a full, sole, and exclusive licence [save and except that the Grantor reserves to himself the right to manufacture in this country as hereinafter provided (*k*)] under the said Letters Patent for the residue of the term thereof and any prolongation or extension of the same to make, use, exercise, and vend (*l*) the said invention in the United Kingdom [Northern Ireland] and the Isle of Man [*or, if the area and the term are to be restricted*, in all places situated within, &c. (*describe the area*), but not elsewhere, during the term of —— years from the —— day of ——, 19—,] [with power for the Licensee to assign (*m*) this licence or grant any sub-licences thereof [with the consent in writing of the Grantor, but not otherwise: Provided that such consent shall not be unreasonably withheld]].

Grant of exclusive licence.

Variation where area and term limited.

Variation where power to assign or sublet.

(*i*) Form No. 69 should be used with Form No. 13. A licence, whether exclusive or general, was not a conveyance within the Conv. Act, 1881: *Guyot* v. *Thomson* [1894], 3 Ch. 388; 64 L. J. Ch. 32; but see now L. P. Act, 1925, s. 205 (1) (ii) (xx), which, *semble*, would bring any form of licence within the definition of "conveyance," but only if it creates "an interest" in real or personal property.

Licence, *qy.* a "conveyance."

(*j*) The effect of granting a licence to a person and his assigns is to license all whom the licensee may license: *Bower* v. *Hodges* (1853), 22 L. J. C. P. 194; see also *Lawson* v. *MacPherson & Co.* (1897), 14 Rep. Pat. Cas. 696.

Assignable.

(*k*) As to the effect of a reservation by an assignor of a patent, to manufacture, &c., the invention: *Howard & Bullough Ltd.* v. *Tweedales and Smalley* (1895), 12 Rep. Pat. Cas. 519.

Reservations.

(*l*) A full licence "to use and exercise," in the absence of other provisions to the contrary, will entitle the licensee to exercise all the powers prohibited to the public by the patent: *Dunlop, &c., Co.* v. *North British Rubber Co.* (1904), 21 Rep. Pat. Cas. 161. A doubt has been expressed whether the substitution, by the P. & D. Act, 1919, s. 8, of the words "make, use and exercise" for the word "use" in the P. & D. Act, 1907, s. 29, effects any appreciable difference in the rights of the parties thereunder: *Re Hale's Patents* [1920], 2 Ch. at p. 386; 37 Rep. Pat. Cas. 171.

"To use and exercise."

(*m*) A licence is not, strictly speaking, assignable, but this Form is commonly used, and where a licensee, who has power to do so, assigns his licence, the assignee becomes in effect the licensee of the original grantor; see *Bower* v. *Hodges* (1853), 22 L. J. C. P. 194; *Lawson* v. *MacPherson & Co. Ltd.* (1897), 14 Rep. Pat. Cas. 696.

Licence unassignable.

No. 14.

Grant of general (or non-exclusive) licence.

PURSUANT to, &c., *as in No.* 13, the Grantor, As Beneficial Owner,(*n*) hereby grants to the Licensee [his executors, administrators, and assigns] (*o*) a full licence under the said Letters Patent (*continue as in last Form*). (*Add Form No.* 69.)

No. 15.

Grant of limited licence.

PURSUANT to, &c., *as in No.* 13, the Grantor, As Beneficial Owner,(*n*) hereby grants to the Licensee a [sole and exclusive] licence under the said Letters Patent to manufacture and sell —— (*the patented article*), made in accordance with the specification and drawings set out in the Schedule hereto [the deposited sample], but not otherwise, in —— (*define the area, as in No.* 13), during the term of —— (*define the term, as in No.* 13).

No. 16.

Assignment of patent to Purchaser.

PURSUANT to, &c., *as in No.* 13, the Vendor, As Beneficial Owner,(*p*) hereby assigns unto the Purchaser,

ALL THAT the said invention and Letters Patent [and Patent of Addition] and the full benefit thereof, and all rights therein or in any extension or prolongation thereof, together with the right to apply for an extension or prolongation of the term thereby granted (*q*) [and the right to recover and take all such proceedings as may be necessary for the recovery of damages or otherwise in respect of all infringements of the said Letters Patent committed as well before as after the date of this deed(*qq*)],

[and right to sue for past infringements.]

TO HOLD unto the Purchaser absolutely.

(*n*) See note to Form No. 13.

(*o*) Insert such of these words as are necessary to comply with the intention of the parties.

(*p*) The usual covenants for title in a conveyance on sale are implied by the use of these words; there is, however, no implied covenant in a sale or mortgage that the patent is valid: *Hall* v. *Conder* (1857), 2 C. B. (N. S.) 22, at p. 41; 26 L. J. C. P. 138, 288; *Heine* v. *Nordin & Co.* (1904), 21 Rep. Pat. Cas. 513; or that the patent may be worked free from disturbance by any other patentee: *Monforts* v. *Marsden* (1895), 12 Rep. Pat. Cas. 266.

Assignee's rights to prolongation.

(*q*) An assignee may petition for prolongation, but even if he has not derived an adequate profit from the patent, he does not stand on the same footing as the original inventor. Prolongation was refused to the assignee where the original inventor had been adequately rewarded: *Re Hopkinson's Patent* [1897], A. C. 249; 66 L. J. P. C. 38; *Re Henderson's Patent* [1901], A. C. 616; 70 L. J. P. C. 119. Terms may be imposed, where an extension is granted, protecting the rights of existing licensees and providing for payments to the original inventor: *Re Fleming and Gale's Patent* (1919), 36 Rep. Pat. Cas. 266. A patent may be extended as to one or more only of its claiming clauses: *Re Lodge's Patent* [1911], 2 Ch. 46; 80 L. J. Ch. 517; *Re Dewar's Patent* (1918), 35 Rep. Pat. Cas. 229; *Re Ferranti's Patent* (1918), 35 Rep. Pat. Cas. 149. Petitions for prolongation are heard by the Court: P. & D. Acts, 1907 and 1919, s. 18. In the case of applications for extension on the ground of loss due to the war, the loss must have been suffered by the patentee as such: *ib.*, s. 18 (6).

Accrued rights.

(*qq*) An assignment of a patent does not *per se* carry an accrued right of action for infringement: *Wilderman* v. *Berk & Co.* (1925), 42 Rep. Pat. Cas. p. 90.

Section III.

Covenants by a Licensee or Purchaser.

No. 17.

To pay royalty.

That the Licensee will, during the continuance of the licence hereby granted, pay to the Grantor as hereinafter provided a royalty of —— on each —— (*patented article*), manufactured [and sold] by the Licensee in accordance with the said invention, such royalty to be paid on the —— day of —— [and the —— day of ——] in every year.

No. 18.

To pay minimum yearly sum.

That if the royalties payable in any one year ending on the —— day of —— shall not have amounted to the aggregate sum of £—— on such —— day of ——, then the Licensee will pay to the Grantor such further sum as with the amount of royalties payable in such year together amounts to the sum of £——.(*r*)

No. 19.

To keep accounts.

That the Licensee will keep at his usual place of business books of account relating exclusively to the said royalties, and containing such true entries (complete in every particular) as may be necessary or proper for enabling the amount of the royalties hereby reserved to be conveniently ascertained, and will at all reasonable times produce the said books and all other books of account (if any) of the Licensee to the Grantor or his duly authorised agents, and will permit him or them to inspect the same and take copies or extracts therefrom, and will give all such other information as may be necessary or proper to enable the amount of the royalties payable hereunder to be ascertained as aforesaid.

No. 20.

To furnish accounts to Grantor.

That the Licensee will, within —— days before [each of] the day[s] hereinbefore fixed for the payment of royalties, deliver to the Grantor or his duly authorised agents a true and complete statement and account in writing of all —— (*patented articles*) manufactured [or sold] by the Licensee during the preceding [half-]year commencing on the —— day of —— [or the —— day of ——, as the case may require] and of all royalties payable to the Grantor in respect thereof and will, if and when required by the Grantor, verify such account or any part thereof by statutory declaration of the Licensee or of some other person approved by the Grantor.

(*r*) See note to Form No. 61, *infra*. The Inland Revenue demand *ad valorem* bond duty on the capital value of all minimum royalties or annual sums unless conveyance duty is payable. Stamp.

No. 21.

Articles to be marked with number and year of patent.

THAT the Licensee will, in a conspicuous place, apply to each —— (*patented article*) manufactured under this Licence the word "Patent" or "Patented" together with the year and number of the said Letters Patent.(*s*)

No. 22.

Alternative form.

THAT the Licensee will affix or attach to [stamp, engrave or impress on] each —— (*patented article*) manufactured under this Licence a mark or label setting forth the name of the Grantor and the word "Patent" together with the year and number of the said Letters Patent.(*s*)

No. 23.

Articles to be serially numbered.

THAT the Licensee will serially number all articles manufactured under this Licence.

No. 24.

Articles to be marked with notice of limited licence.(*t*)

THAT the Licensee will [in a conspicuous place and] in a permanent manner affix or attach to [stamp, engrave or impress on] each —— (*patented article*) a licence plate approved by the Grantor having thereon the words set out in the Schedule hereto (*t*) [the following words ——].

No. 25.

Not to deliver articles unless marked with notice of limited licence.(*t*)

THAT the Licensee will not deliver any —— (*patented articles*) without previously affixing or attaching thereto a licence plate (*continuing as in the last form*).(*t*)

THAT the Licensee will not knowingly permit or suffer any licence plate attached or affixed to any —— (*patented article*) manufactured [sold] by him under this licence to be removed from such article.(*t*)

No. 26.

Not to permit notice to be removed.(*t*)

THAT the Licensee will not [without the previous consent in writing of the Grantor], either directly or indirectly, and either by himself or any agents, use or exercise the invention the subject of the said Letters Patent [and any further Letters Patent] or any part thereof, otherwise than in accordance with this Licence.

No. 27.

Not to work otherwise than in accordance with licence.

No. 28.

To permit Grantor to inspect stock and process of manufacture.

THAT the Licensee will permit the Grantor [or his duly authorised agents] at all convenient times to enter into and upon any premises of the Licensee where any —— (*patented articles*) may be stored or manufactured under this Licence for the purpose of inspecting the same, and the manner of manufacture thereof, and generally of ascertaining that the provisions of this licence are being complied with by the Licensee.

Infringer's liability.

(*s*) An innocent infringer of a patent granted after 1907 is exempted from liability for damages. To affect an otherwise innocent infringer with notice of a patent it is necessary for the word "patent," or some equivalent expression, and the year and number of the same, to appear on the article: P. & D. Acts, 1907 and 1919, s. 33.

(*t*) These forms may be used when restrictions are to be imposed on the sale, &c., of patented articles. For form of notice, see Form No. 73.

No. 29.

To comply with the provisions of s. 27 of the Patents and Designs Acts, 1907 and 1919.

THAT the Licensee will [use his best endeavours to] work the said invention on a commercial scale within the United Kingdom and [to] meet the demand for —— (*the patented article*) within the United Kingdom to an adequate extent and on reasonable terms within the meaning of section twenty-seven of the Patents and Designs Acts, 1907 and 1919, and will not do or suffer any act or thing and will not abstain from doing any act or thing which may be or may be calculated to constitute an abuse of monopoly rights within the meaning of that section.(*u*)

No. 30.

To comply with provisions of Patents and Designs Acts, 1919 and 1907, s. 27 (qualified form for use in general licence).

THAT the Licensee will not in any way abstain from performing or doing any act or thing on his part to be performed or done under the provisions of this Licence whereby the monopoly rights of the Grantor conferred by the said Letters Patent might be prejudiced under the provisions of section twenty-seven of the Patents and Designs Acts, 1907 and 1919.(*v*)

No. 31.

To give notice of demands for other licences.

IF at any time during the continuance of this Licence there shall come to the knowledge or notice of the Licensee [either party hereto] any demands for or inquiries as to the grant of licences to make, use, exercise, or vend the said invention, then and in such case the Licensee [such party] will forthwith and from time to time communicate in writing all such demands and enquiries to the Grantor [the other party hereto].(*w*)

No. 32.

To give notice of orders or enquiries (for use in licences limited as to area or application of the invention).

IF at any time during the continuance of this Licence the Licensee shall receive any orders or enquiries for —— (*the patented article*) for any place outside the area to which this Licence relates [or for any purpose other than the purpose authorised by this Licence] he shall forthwith communicate the same in writing to the Grantor and for his benefit.

No. 33.

To give notice of infringements.

THAT the Licensee will use his best endeavours to discover any infringement of the said Letters Patent, and in the event of any infringement or suspected infringement coming to the knowledge of the Licensee forthwith give notice of the same in writing to the Grantor [together with all such information relating thereto as the Licensee may from time to time obtain].(*x*)

(*u*) See Chap. V., Sect. VIII, *supra*.

(*v*) See Chap. V., Sect. VIII, *supra*.

(*w*) A covenant of this character is now advisable in all licences where the grantor reserves to himself the right to use and exercise the patented invention or to grant other licences in respect thereof, in view of the provisions of the P. & D. Acts, 1907 and 1919, s. 27, and conversely a similar covenant by the grantor should be inserted where the licensee has the sole rights. Notice of demands.

(*x*) See last note.

No. 34.
Licensee not to assign or charge licence

THAT the Licensee will not at any time assign this Licence or grant any sub-licences thereof or in any way charge or deal with the rights hereby granted without the previous consent in writing of the Grantor [which consent shall not be unreasonably withheld].

No. 35.
Licensee not to dispute validity of patent.

THAT the Licensee will not at any time during the continuance of this Licence [*or*, at any time during the subsistence of the said Letters Patent] dispute the validity of the said Letters Patent or of any of the claiming clauses thereof.(*y*)

SECTION IV.

Covenants by a Licensor or Vendor.

No. 36.
Covenant by Vendor [Grantor] for title when Vendor [Grantor] does not assign [grant licence] as Beneficial Owner.(*z*)

THE Vendor [Grantor] hereby covenants with the Purchaser [Licensee] that, notwithstanding anything by the Vendor [Grantor] done or omitted or knowingly suffered, the Vendor [Grantor] has good right to assign the said Letters Patent [grant the licence herein contained] in manner aforesaid, and that the Purchaser [Licensee] and the persons deriving title under him may at all times hereafter during the continuance of the said Letters Patent [of this Licence] enjoy the full benefit thereof without any interruption or disturbance from or by the Vendor [Grantor] or any person rightfully claiming under him, and that the Vendor [Grantor] and every person rightfully claiming under him will, at the request and cost of the Purchaser [Licensee] or the persons deriving title under him, execute and do such further assurances and things for more effectually vesting the said Letters Patent in him or them [giving effect to the Licence hereby granted] as he or they shall reasonably require.

No. 37.
Covenant by Grantor for quiet enjoyment.

[THE Grantor hereby covenants with the Licensee] that the Licensee, paying the royalties hereby reserved and observing and performing the covenants by the Licensee hereinbefore contained, shall and may at all times during the continuance of this licence enjoy and exercise the same without any interruption or disturbance by the Grantor or any person lawfully claiming under him.

No. 38.
Covenant for validity (absolute covenant).

THE Grantor [Vendor] hereby covenants with the Licensee [Purchaser] that the said Letters Patent are, as respects each claiming clause thereof, valid and subsisting, and are not void or voidable.(*a*)

(*y*) *Semble*, notwithstanding P. & D. Acts, 1907 and 1919, ss. 32A and 35, the patent is still invalid if it contains an invalid claim, see Chap. V, Sect. V.

(*z*) See note to Form No. 13, *supra*.

Qualified and absolute

(*a*) This is an absolute covenant, and should only be used by express

No. 39.
Covenant for validity of claims (absolute covenant).

THE Grantor [Vendor] hereby covenants with the Licensee that each and every claim [*or certain specified claims*] of the specification of the said Letters Patent which effectively covers —— (*the patented article*) is valid.(*b*)

No. 40.
Covenant that patent is valid (qualified covenant).

[THE Grantor [Vendor] hereby covenants with the Licensee [Purchaser]] that, notwithstanding anything by the Grantor [Vendor] done or omitted or knowingly suffered, the said Letters Patent [or each and every claim of the specification of the said Letters Patent [*if desired add*, which effectively covers the —— (*patented article*)] is] are now valid and subsisting.(*c*)

No. 41.
Covenants by Grantor (introductory form).

THE Grantor hereby covenants with the Licensee that the Grantor will, during the subsistence of the Licence hereby granted, observe and perform the covenants and provisions following (that is to say) :—

No. 42.
To pay renewal fees.

THAT the Grantor will, within —— days before the same respectively become payable, pay all fees and other expenses necessary or proper for the renewal and maintenance of the said

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arrangement (otherwise the qualified covenant should be used). In the case of an assignment, if the patent turns out to be invalid the assignees can sue for damages only. The mere sale of a patent carries with it no implied condition that the patent is valid : *Nadel* v. *Martin* (1903), 20 Rep. Pat. Cas. 129 ; *Hall* v. *Conder* (1857), 2 C. B. N. S. 22, at p. 40. covenants in respect to patents.

In an executory contract for the sale of a patent, if the warranty of validity amounts to a condition, the purchaser may raise the question of validity in an action for the purchase price : *Nadel* v. *Martin, supra.* The same result follows as respects an agreement for a licence : *Henderson* v. *Shields* (1907), 24 Rep. Pat. Cas. 108. The assignor of a licence under a patent cannot, even in the absence of a covenant, dispute as against his assignee the validity of the patent ; to do so would be in derogation of his grant : *Gonville* v. *Hay* (1903), 21 Rep. Pat. Cas. 49. It is conceived that the same rule applies in the case of an assignment of a patent. Where the assignment was made by the trustee in liquidation of the patentee, the latter was held not to be so estopped as against the assignee : *Cropper* v. *Smith* (1885), 10 A. C. at p. 259. Warranties in contracts. Derogation of grant.

Where in a licence the grantor gives an unqualified covenant that the patent is valid, there is considerable doubt whether the licensee is estopped in an action for royalties from disputing the validity of the patent. He can, however, sue for damages for breach of the covenant. In the absence of such a covenant, the licensee is estopped as between himself and his grantor, during the continuance of the licence, from raising the question of the validity of the patent, but he may always dispute the ambit or scope of the claims ; see *Clark* v. *Adie* (1877), 2 A. C. 423, at p. 436 ; 46 L. J. Ch. 598 ; Frost, Patent Law and Practice, 4th ed., Vol. II, pp. 201–205. Effect of unqualified covenants.

(*b*) See last note. Under the P. & D. Acts, 1907 and 1919, s. 32A, relief must now be granted in respect of any claims held valid in an action for an infringement without regard to the invalidity of any of the other claims. Relief for valid claims

(*c*) This is a qualified covenant confined to the personal acts or omissions of the grantor, and does not extend to extraneous matters affecting the validity of the patent.

Letters Patent, and further will (if required by the Licensee) produce the receipts or other sufficient evidence of the payment thereof to the Licensee :

PROVIDED that if the Grantor shall make default in renewing or maintaining the said Letters Patent as aforesaid, then the Licensee may pay the said fees and expenses or any part thereof, and deduct such payments from the royalties payable by him under this Deed.(*cc*)

No. 43.

To take legal proceedings to protect patent, or permit Licensee to do so.

(1) THAT the Grantor (*d*) will, at the request and cost of the Licensee—

(i) Commence all necessary legal or other proceedings in respect of any infringement or suspected infringement of the said Letters Patents for effectually protecting and defending (*e*) the same, and take all such steps and do all such things as may be necessary for prosecuting any such proceedings to a successful conclusion ; or

(ii) Permit the Licensee at the like cost so to do in the name of the Grantor :

(2) IN the event of the Licensee so commencing or prosecuting any such proceedings in the name of the Grantor, then the Grantor shall execute and do all such documents and things, and render all such assistance to the Licensee as may be necessary or proper to enable the Licensee so to do :

Renewals ; lapse.

(*cc*) As to renewal fees : Chap. V, Sect. V, *supra ;* as to restoration of lapsed patents : *ib.*, Sect. I, *supra.*

(*d*) In all cases the registered owner of a patent should be made a party to an action for infringement. The general rule is that a licensee cannot sue infringers in his own name unless the licence was coupled with a grant amounting to an assignment of the patent : *Heap* v. *Hartley* (1889), 42 Ch. D. 461 ; 58 L. J. Ch. 790, see also *Frentzell* v. *Dougill* (1904), 21 Rep. Pat. Cas. 641, and *British Glass Bottle Manufacturers, Ltd.* v. *Foster & Sons, Ltd.* [1917], 34 Rep. Pat. Cas. at pp. 82 and 226. In *Scottish Vacuum Cleaner Co. Ltd.* v. *Provincial Cinematograph Theatres, Ltd.* [1915], 32 Rep. Pat. Cas. 353 (a Scottish case), however, it was held that an exclusive licensee for Scotland could sue in his own name in respect of articles made in accordance with the patent and obtained from the owners of the patent, the action being treated as an action for infringement of the licence. There is no reported case in the English Courts to this effect, and it is conceived that the finding in the Scottish case that a licensee has a sufficient title to sue in his own name is not of general application ; but must be limited to cases where the infringing article was obtained from the owner of the patent himself, and the licence is an exclusive one. A licensee who has been granted a compulsory licence under the P. & D. Acts, 1907 and 1919, s. 27, may, in the circumstances therein defined, take proceedings in his own name, as though he were the patentee, but he must make the patentee a defendant.

Right to sue.

Covenant to protect.

(*e*) A covenant " to protect and defend from infringements at all times during the licence by all means " involves a liability to maintain the patent and to keep it alive : *Lines* v. *Usher* (1897), 14 Rep. Pat. Cas. 206.

PROVIDED that the Licensee (whether proceedings are taken by the Grantor or the Licensee) shall indemnify and keep indemnified the Grantor and his estate and effects against all claims, costs, charges, or expenses of whatsoever kind or description which the Grantor may incur.

Power of attorney in case of exclusive licence.

[(3) AND the Grantor hereby irrevocably appoints the Licensee to be his attorney during the subsistence of this Licence for the purposes aforesaid.]

No. 44.

Grantor to take proceedings to prevent infringement [at his own cost], *or* at the joint cost of of the Grantor and Licensee.

THAT if any infringement of the said Letters Patent prejudically affecting the business of the Licensee carried on under this Licence shall be committed or threatened, then the Grantor will, at the request of the Licensee [but at the cost of the Grantor], take all necessary proceedings for preventing the same [the cost of such proceedings to be borne by the Grantor and Licensee in equal shares].

No. 45.

Grantor to take proceedings considered expedient by named advisors.

THAT the Grantor will [at his own expense *or* at the expense of the Licensee] commence and prosecute to the [reasonable] satisfaction of the Licensee (*f*) all such proceedings in respect of any infringement or suspected infringement that may come to his notice, and against all such persons as in the opinion of —— (*some experts*) and —— it is just or expedient to commence or prosecute.

No. 46.

Grantor not to institute proceedings without consent of Licensee.

THAT the Grantor will not at any time during the subsistence of this Licence commence any proceedings for infringement of the said Letters Patent without the previous consent in writing of the Licensee.(*g*)

No. 47.

Grantor to defend proceedings for revocation of patent.

THAT the Grantor will, at his own expense [*or*, at the expense of the Licensee], defend every proceeding for revocation of the said Letters Patent (*h*) [as well as every application for other relief in respect of the said Letters Patent under the provisions of section twenty-seven of the Patents and Designs Acts, 1907 and 1919.(*i*)]

No. 48.

Grantor to instruct Licensee as to working patent.

THAT the Grantor will, at the request and cost of the Licensee, [deliver to the Licensee a full set of working drawings of —— (*the patented article*) and will] give and render to the Licensee or

(*f*) The word "prosecute" has received a limited construction with reference to the prosecution of actions for threats of legal proceedings for infringement under P. & D. Act, 1907, s. 36, see *Craig* v. *Dowding* (1908), 25 Rep. Pat. Cas. 1. It is therefore advisable to insert this provision.

(*g*) This Form should only be used in a sole and exclusive licence.

(*h*) A defendant in an action for infringement can counterclaim for revocation: P. & D. Acts, 1907 and 1919, s. 32.

(*i*) See "Abuse of Monopoly Rights," Chap. V, Sect. VIII, *supra*.

his servants or workmen all such instruction, information, and assistance as may be necessary or proper for enabling the Licensee to work the said invention to the best advantage.

No. 49.
Grantor not to amend specification without consent of Licensee.

THAT the Grantor will not amend or seek leave to amend the specification of the said Letters Patent or the drawings forming part thereof, without the previous consent in writing of the Licensee, which consent shall not be unreasonably withheld.(*j*)

No. 50.
Grantor to submit proposed amendments of specification for Licensee's approval.

THAT the Grantor will, before seeking leave to amend the specification of the said Letters Patent,(*j*) obtain the consent in writing of the Licensee so to do and furnish the Licensee with a statement in writing setting forth the nature of the proposed amendment and the terms thereof for the approval of the Licensee, but such consent and approval shall not be unreasonably withheld.(*k*)

No. 51.
Grantor not to use, &c., patented invention or grant other licences [without consent of Licensee].

THAT the Grantor will not at any time during the continuance of this Licence make, use, exercise, or vend, or authorise others to make, use, exercise, or vend the said invention within this realm [*or, where the area is restricted*, within the area for which this Licence is granted] [without the previous consent in writing of the Licensee].

No. 52.
Not to grant licences to others on more favourable terms.

THAT the Grantor will not at any time during the continuance of this Licence grant any licences in respect of the said Letters Patent to any other persons on terms more favourable to the licensee thereunder than the terms herein contained, and the Grantor will, before granting any other licence, give at least —— days' notice in writing to the Grantee of his intention to grant the same.

No. 53.
To reduce royalties to level of other licences.

IF in any licence granted by the Grantor to any other person the royalties payable by the licensee thereunder shall be less than the royalties hereby reserved, then, and in such case, the royalties payable hereunder shall [respectively] be reduced so as not to exceed the lowest royalties payable [in respect of each —— (*patented article*)], under any such other licence.

No. 54.
Purposes for which other licences may be granted.

NOTHING herein contained shall (save as herein expressly provided) affect or limit the right of the Grantor to grant licences

Specification amendment.

(*j*) The Comptroller, on the application of the patentee, may amend the specification by way of disclaimer, correction or explanation: P. & D. Acts, 1907 and 1919, s. 21. The Court has similar powers in an action for infringement or proceedings for revocation: P. & D. Acts, 1907 and 1919, s. 22; R. S. C., O. 53A, r. 23. In an action for infringement, the Court may, where certain claims are held to be invalid, impose terms on a patentee as to amendment: P. & D. Acts, 1907 and 1919, s. 32A.

(*k*) This is a stringent provision for use where licensee has the sole rights.

[in the United Kingdom or elsewhere] to any other persons, for any of the following purposes (namely, —— (*define purposes, &c., for which licences may be granted by the Grantor*).

No. 55.
Grantor to communicate improvements.

If at any time during the continuance of this Licence the Grantor shall make or discover any improvement of or addition to the said invention or the working of the same, or which can or may be applied thereto, or of which the Grantor is now or shall hereafter become the owner (*l*) or obtain the control of any such improvement or addition, then and in such case, and whether the improvement or addition shall be patented or not, the Grantor will (at the cost of the Licensee as to any actual out-of-pocket expenses occasioned thereby to the Grantor) communicate and explain the same to the Licensee, who shall be entitled [solely] to use the same during the continuance of this Licence without paying any increased royalty in respect thereof (*m*) [*in the case of an assignment*, who shall be entitled to the sole and exclusive benefit thereof].

No. 56.
The same (a short form).

If the Grantor shall, during the continuance of this Licence, make any improvement in or addition to the said invention or any discovery useful to the manufacture of —— (*patented articles*) (including any such improvement, addition, or discovery now within his knowledge or under his control), then the Grantor will forthwith give notice in writing thereof to the Licensee, who shall be entitled (*continue as in last Form*).

No. 57.
Vendor to communicate and assign improvements.

If the Vendor shall at any time hereafter make or discover any addition to or improvement in the said invention, then and in such case the Vendor will forthwith communicate and explain the same to the Purchaser, and will, if required by the Purchaser (but at the expense of the Purchaser), apply for and endeavour to obtain or join with the Purchaser in applying for and obtaining Letters Patent, or, at the option of the Purchaser,

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(*l*) A covenant to assign and to patent improvements of which the covenantor "shall become possessed" will not include improvements in which he has only a beneficial interest with others. At most it would include inventions under his sole control, either as true inventor or as a person to whom an invention has been communicated: *Pneumatic Tyre Co.* v. *Dunlop* (1896), 13 Rep. Pat. Cas. 553.

Covenant to patent improvements.

(*m*) Licences may be determined by either party, on giving three months' notice in writing, at any time after the patent, or all the patents comprised therein which were in force, and by which the article or process was protected, at the time of making the contract has or have ceased to be in force, but in the case of contracts made before the 28th August, 1907, the party giving the notice is liable to pay compensation: P. & D. Acts, 1907 and 1919, s. 38 (2).

Termination by notice.

Patents of Addition (*n*) [in the United Kingdom] in respect thereof, and will, at the like cost and from time to time, execute and do all such documents and things as may be necessary or proper for obtaining valid Letters Patent pursuant to any such application, and for legally vesting the same if and when obtained in the Purchaser absolutely.(*o*)

No. 58. Vendor to assign future patents or patent rights.

IF the Vendor shall at any time hereafter acquire or obtain the control of any Letters Patent or rights in the nature of Patent Rights [in this realm] relating to the said invention [or any such addition or improvement therein as hereinbefore mentioned], then and in such case the Vendor shall forthwith give notice thereof to the Purchaser, and will, if required by and at the expense of the Purchaser, from time to time execute and do all such documents and things as may be necessary or proper for legally vesting the same and the full benefit thereof and of the invention for which any such Letters Patent or Patent Rights have been granted in the Purchaser absolutely.(*p*)

No. 59. Not to abuse monopoly rights.

THAT the Grantor will not, by any act, deed, or omission, abuse his monopoly rights under the said Letters Patent within the meaning of section twenty-seven of the Patents and Designs Acts, 1907 and 1919.(*q*)

SECTION V.

Miscellaneous Forms.

No. 60. Licence to determine if patent declared invalid.(*s*)

IF the said Letters Patent shall be revoked or declared invalid or if all the claiming clauses which effectively cover —— (*the patented article*) [*or*, or if —— (*specified claims*)] shall be declared invalid (*r*) by a Court of competent jurisdiction, the payment of royalties hereunder shall (unless the judgment or order is over-ruled on appeal) cease and this Licence shall thereupon determine, but without prejudice to any rights hereunder that may have accrued to either party at the date of such determination.(*t*)

(*n*) Patents of Addition were created by the P. & D. Act, 1907, s. 19. A patent of addition on a patent of addition may be granted.

(*o*) No covenant for further assurance of improvements is implied by the use of the words "As Beneficial Owner."

(*p*) A covenant of this character is not against public policy: *Printing, &c., Co.* v. *Sampson* (1875), L. R. 19 Eq. 462; 47 L. J. Ch. 580.

(*q*) This Form should be used where the grantor reserves the right to use the invention himself or to grant other licences.

(*r*) See P. & D. Acts, 1907 and 1919, s. 32A, and Chap. V, Sect. V, *supra*.

(*s*) See Chap. V, Sect. IX, Stamps.

(*t*) Where a judgment declaring a patent invalid has been reversed on appeal, a licensee cannot, as a rule, contend that the original judgment deter-

No. 61.

Power for Grantor to determine licence.

THE Grantor may, on the happening of all or any of the following events by notice in writing to the Licensee, forthwith determine this Licence, namely—

(i) If the Licensee shall fail to manufacture in any one year, commencing on the —— day of ——, 19—, at least —— (*patented articles*) ;

Failure to manufacture minimum number of articles.

(ii) If any of the royalties [or other sums (*u*)] payable under the provisions of this Deed shall be in arrear and remain unpaid for a period of —— days after the same became payable as hereinbefore provided [whether or not demand therefor shall have been made by the Grantor] ;

Failure to pay royalties at appointed times.

(iii) If the Licensee shall have committed or knowingly permitted a breach of any other of the covenants hereinbefore contained and on his part to be performed and observed : Provided that in the case of any such breach capable of being made good the Grantor shall not determine this Licence unless and until the Licensee shall have failed to make good the same within —— days after he shall have been served with a notice in writing by the Grantor requiring him to make good such breach ;

Breach of other covenants.

(iv) If the Licensee shall be adjudged bankrupt [or make any arrangement or composition with his creditors] ;

Bankruptcy of Licensee.

[(v) If any order shall be made, or any resolution passed for the winding up of the Company [except a resolution for winding up with a view to reconstruction].]

Where the Licensee is a company.

No. 62.

Power for Licensee [either party] to determine licence on notice.

THIS Licence may be determined by the Licensee [either party hereto] [at any time after the —— day of ——, 19—,] by giving at least —— months' (*v*) previous notice in writing, and on the expiration of such notice, this Licence shall forthwith determine and

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mined the licence or avoided his liability thereunder : *Cheetham* v. *Nuttall* (1893), 10 Rep. Pat. Cas. 321.

Termination of contracts.

Contracts relating to the lease of or licence to use or work a patented article or process may now be determined by either party on three months' notice at any time after the patent or all the patents by which the article or process was protected at the time of making the contract has or have ceased to be in force. In the case of contracts made before the 28th August, 1907, the party giving the notice is liable to pay compensation : P. & D. Acts, 1907 and 1919, s. 38 (2).

Power to determine.

(*u*) A covenant to make up an annual sum of £2,000 if royalties failed to reach that amount, with power for the grantor to determine the licence on default, was held not to be an absolute covenant to pay, but an alternative provision entitling the grantor to put an end to the licence on non-payment : *Tielens* v. *Hooper* (1850), 5 Exch. Cas. 830 ; 20 L. J. Ex. 78.

Month.

(*v*) Formerly "months" (*simpliciter*) referred to lunar months, except in mercantile agreements made in the City of London : *Erith Engineering*

become void, but without prejudice to any rights hereunder that may have accrued to either party before the date of such determination.

No. 63.

Liberty for Licensee to manufacture for export without payment of royalty on exported goods.

THE Licensee may manufacture within the United Kingdom —— (*patented articles*), for sale outside the United Kingdom [in the foreign countries in the Schedule hereto mentioned, but not otherwise,] without payment of any royalty therefor to the Grantor:

PROVIDED that all —— (*patented articles*) so manufactured or sold by the Licensee shall be marked [in a manner to be approved by the Grantor] before such goods leave the factory or other premises of the Licensee where the same are made [*add, if necessary*, or put together] with the words "Not licensed for use in the United Kingdom": (*w*)

No. 64.

Licensee to prohibit purchasers abroad of patented articles manufactured in the United Kingdom from selling the same in the United Kingdom.

PROVIDED that if the Licensee enters into any contract for the sale outside the United Kingdom of —— (*patented articles*) manufactured in the United Kingdom by the Licensee, then the Licensee shall procure to be inserted in all such contracts a provision whereby the purchasers of such —— (*patented articles*) shall be prohibited from selling the same in the United Kingdom, and the Licensee shall strictly enforce all such provisions.(*x*)

No. 65.

Power for purchaser, &c., to extinguish conditions voidable under s. 38.

THE Purchaser [Lessee] [Licensee] may at any time, on giving to the Vendor [Lessor] [Grantor] at least three months' notice in writing and on payment as compensation of such sum [[rent] [royalty] for the residue of the said term (*y*)] as may be fixed by the arbitrator appointed by the Board of Trade, relieve himself of his liability to observe any condition herein contained in restraint of trade or contrary to public policy within the meaning of sub-section (1) of section thirty-eight of the Patents and Designs Acts, 1907 and 1919, or which may otherwise offend against the provisions of that sub-section.(*z*)

Co. Ltd. v. *Sanford Riley Stoker Co.* (1920), 37 Rep. Pat. Cas. 217; but under L. P. Act, 1925, s. 61, "month" means calendar month.

(*w*) Conditions may be attached to patented articles to follow the goods so as to run with them.

Sales abroad.

(*x*) A contract made in this country for the sale of patented goods which are abroad is not a "vending" so as to constitute an infringement of an English patent if the property in the goods did not pass in this country to the purchaser: *Badische Anilin, &c., Fabrik* v. *Hickson* [1906], A. C. 419; 75 L. J. Ch. 621; but an action would lie against any person using or exercising the invention in this country: *ib.*, at p. 424.

(*y*) *I.e.*, the term of the contract.

(*z*) This Form is to be used in connexion with Forms 11 and 12, p. 560, and must be inserted in all contracts, &c., coming within the provisions of the section referred to; see Chap. V, Sect. VII, *supra*.

No. 66.
Articles manufactured by other processes to be subject to royalty.

WHERE the Licensee manufactures —— (*articles produced by the patented invention*) by any process [by any machine or mechanism] not comprised in the said Letters Patent, then such —— (*articles produced by the patented invention*) shall, for the purpose of ascertaining the amount of royalties payable hereunder, be deemed to have been manufactured by the process [machine or mechanism] the subject of the said Letters Patent.(*a*)

No. 67.
Power for Licensee to dispute validity of patent.

THE Licensee may at any time (notwithstanding anything herein contained to the contrary) dispute the validity of the said Letters Patent.(*b*)

No. 68.
No warranty of validity.

NOTHING herein contained shall be construed as or deemed to be a representation or warranty that the said Letters Patent are valid.(*c*)

No. 69.
Use of words "As Beneficial Owner" to imply statutory covenants for title.

THE words "As Beneficial Owner" hereinbefore contained shall be deemed to imply the like covenants for title as if this deed were a conveyance for value within the meaning of section seventy-six of the Law of Property Act, 1925.(*d*)

THE provisions of section one hundred and ninety-six of the Law of Property Act, 1925, shall apply to all notices required to be served hereunder.

No. 70.
As to notices.

No. 71.
Arbitration clause.

IF any dispute or difference shall arise between the parties hereto concerning the construction of this deed, or the rights, duties or liabilities of any party hereunder, then and in every such case the matter in dispute or difference shall be referred to two arbitrators, one to be chosen by each party [*or*, a single arbitrator] under the provisions of the Arbitration Act, 1889.

(*a*) *Semble*, a provision such as this is a restriction within the meaning of P. & D. Acts, 1907 and 1919, s. 38, and this Form should only be used in connexion with the Forms Nos. 11, 12 and 71.

(*b*) This Form is unusual and should only be used where expressly agreed upon.

(*c*) This Form should be inserted where there is any doubt on the part of the grantor as to the validity of the patent. A warranty by a vendor that a patent is valid and in full force will entitle the purchaser to recover damages from the vendor if the patent subsequently turns out to be invalid: *Berchem* v. *Wren* (1904), 21 Rep. Pat. Cas. 683. Warranty.

(*d*) A "conveyance" now includes an assurance of an interest in "property" and "property" includes a thing in action and any interest in real or personal property: L. P. Act, 1925, s. 205 (1) (ii) (xx), *semble*, this would include any licence if it creates "an interest" in property and not a mere personal right. An exclusive licence did not come within the Conv. Act, 1881: *Guyot* v. *Thomson* [1894], 3 Ch. 388; 64 L. J. Ch. 32. The provisions of L. P. Act, 1925, s. 196, respecting notice, extend to notices required to be served by any instrument affecting "property" coming into operation after 1925, hence Form No. 70 can seldom be required. "Conveyance." "Property." Notices.

THE SCHEDULE.

No. 72.

Particulars of the Letters Patent:

Form of schedule where several patents.

Number of Patent.	Year.	Grantee of Patent.	Title of Specification.

No. 73.

Notice of price restriction.

This —— (*patented article*), is manufactured under British Patents, and is sold under a Licence which imposes a restriction as to price. [Any person selling it below the authorised price is liable to an action at law.](*e*)

PART II.

PRECEDENTS OF INSTRUMENTS RELATING TO PATENTS.

No. I.

AGREEMENT *for* SALE *of a* PATENT *for which an* APPLICATION *has been made, but* BEFORE *the* GRANT *of a* PATENT.(*a*)

Parties.

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Inventor), of the one part, and C. D., of, &c. (hereinafter called the Purchaser), of the other part: WHEREAS—

Application for patent.

(1) The Inventor claims to have made an invention relating to ——, and has left at the Patent Office on the —— day of ——, 19—, an Application, numbered ——, for provisional protection within this realm in respect of such invention, accompanied by a provisional [*or* complete] specification, but has not yet left a complete specification:

[Variation where complete specification filed after application.]

[(2) Pursuant to the said Application, the Inventor on the —— day of ——, 19—, left at the Patent Office a complete specification:]

Notice.

(*e*) A notice in these terms brought to the knowledge of a trader at the time of the sale was held sufficient to enable a patentee to obtain an injunction restraining the trader from selling the goods below the minimum price authorised by the patentee: *Columbia Graphophone Co.* v. *Vanner* (1916), 33 Rep. Pat. Cas. 104.

Registration.

(*a*) This agreement should be registered at the Patent Office as soon as the Letters Patent are granted; see 1910 (E) 27 Rep. Pat. Cas., Appendix vi. No entry can be made in the register until Letters Patent have been granted.

[*or*, (2) The said complete specification has not yet been accepted :] [Variation where complete specification not yet accepted.]

[*or*, (2) The said complete specification has been accepted but Letters Patent have not yet been granted in respect thereof :] [Variation where complete specification accepted but patent not yet granted.]

(3) The Inventor has, for the consideration and upon the terms hereinafter appearing, agreed to sell to the Purchaser the full benefit of the said invention and application, and of any Letters Patent that may hereafter be granted pursuant thereto :

NOW IT IS HEREBY AGREED as follows :—

1. In consideration of the sum of £——, now paid by the Purchaser to the Inventor (the receipt whereof the Inventor hereby acknowledges), the Inventor shall sell (*b*), and the Purchaser shall purchase the Full benefit of (together with all rights of whatsoever kind, nature, or description, of the Inventor in) the said invention and application, and of and in any Letters Patent that may hereafter be granted pursuant thereto, including the right to apply for any prolongation or extension of the term of any such Letters Patent. Agreement for sale.

2. The Inventor shall, within —— days (*c*) from the execution hereof, cause to be filed at the Patent Office a complete specification pursuant to the said application drawn in good faith and with reasonable skill and knowledge (*d*) [by ——, of —— (*an agreed expert*)], and shall, within —— days from the filing thereof, furnish the Purchaser with a true and correct copy of the same and of any drawings forming part thereof. Inventor to file complete specification.

(*b*) Letters Patent cannot be assigned before they are granted so as to pass the legal interest : *Bowdens, &c., Co.* v. *Herbert Smith & Co.* [1904], 2 Ch. 86, 122; 73 L. J. Ch. 522, 776. This clause constitutes a contract which will be carried into effect under clause 4, *infra*, when the Letters Patent are granted. If the Letters Patent are not obtained the purchase-money will be repaid under clause 5, *infra*. An agreement to obtain the grant of a British Patent effectively covering an invention, for which an application for provisional protection has been made, does not necessarily require that the patent be granted pursuant to the original application. Where the original application was abandoned and a patent, which in fact effectively covered the invention, was subsequently obtained on a fresh application, it was held that the agreement was sufficiently performed by the inventor and that the consideration therefor was payable to him : *Smith* v. *Bartholomew* (1916), 33 Rep. Pat. Cas. 215. Agreement to obtain grant.

(*c*) A complete specification must be left at the Patent Office within nine months from the date of the application, but an extension of one month can be obtained : P. & D. Acts, 1907 and 1919, s. 5. Specification, time.

(*d*) In any action for infringement the Court must (subject to its discretion as to (i) costs,; (ii) the date from which damages should be reckoned ; and (iii) the imposition of terms as to amendment) grant relief in respect of any valid claims in the patent which are infringed, without regard to the Relief.

Inventor to use his best endeavours to obtain acceptance of complete specification [without a reference] and grant of patent.

3. THE Inventor shall use his best endeavours, and shall execute and do all such documents and things, and pay all such fees and other expenses as shall be necessary or proper for procuring the acceptance (*e*) of such complete specification [without any reference (*f*) therein, to any specification of prior date], and for obtaining the grant of valid Letters Patent pursuant to the said application.

If patent granted, Inventor to execute legal assignment.

4. IF Letters Patents are granted to the Inventor pursuant to the said application, the Inventor shall forthwith, at his own expense [*or*, at the expense of the Purchaser], execute and do all such documents and things as may be necessary or proper for legally vesting in the Purchaser the full benefit thereof, and of the said invention absolutely.

[Alternative form where form of assignment given in schedule.]

[4A. IF Letters Patent are granted to the Inventor pursuant to the said application, the Inventor shall, at his own expense [*or*, at the expense of the Purchaser], execute an assignment of the same as nearly as circumstances admit in accordance with the form of assignment contained in the Schedule hereto, and shall execute and do all such other documents and things, &c. (*continue as in last Form, saying at the end*, And the Inventor hereby irrevocably appoints the Purchaser and the persons deriving title under him jointly and severally to be his attorney or attorneys for the purpose of executing such assignment).**]**

If patent not granted, purchase-price to be repaid.

5. (1) IF the Inventor shall fail to obtain the grant of Letters Patent, pursuant to the said application, within —— months

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validity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims or permitting them to remain there: P. & D. Acts, 1907 and 1919, s. 32A.

Damages for use before amendment.

Section 23 of the Act of 1907, which is still in force, also provides that where an amendment of a specification by way of disclaimer, correction, or explanation, has been allowed under the Act, no damages may be given in respect of the use of the invention before the disclaimer, &c., unless the patentee establishes that the original claim (*i.e.*, in the specification) was framed in good faith and with reasonable skill and knowledge: *Gillette Razor Co.* v. *Luna Razor Co.* [1910], 2 Ch. 373; 79 L. J. Ch. 672; See Chap. V, Sect. V, *supra*. If desired, it may be provided that the draft specification shall be submitted to the purchaser for approval before filing.

Specification, acceptance.

(*e*) The complete specification must be accepted within fifteen (with a possible extension to eighteen months) from the date of the application, or the application will be void: P. & D. Acts, 1907 and 1919, s. 6 (5).

(*f*) The Comptroller has power to order, in certain cases, a reference to prior specifications to be inserted; but his decision is subject to appeal to the Law Officer: P. & D. Acts, 1907 and 1919, s. 7 (4) and (5). The insertion of a reference to other specifications necessarily diminishes the value of a patent.

from the execution hereof [or if the grant of Letters Patent, without any reference therein to any specification of prior date, shall be refused], then and in [either of] such case[s] the Inventor shall repay to the Purchaser the said sum of £——, and this Agreement shall be void, but without prejudice to the rights of either party hereunder at the date of such failure [or refusal]:

(2) PROVIDED that if at any time while the said application is pending the grant of Letters Patent pursuant thereto shall, in the opinion of the Purchaser, be jeopardised by reason of any act or default of the Inventor, nothing herein contained shall prevent the Purchaser from taking such steps as he may consider necessary for preserving his rights hereunder.(*g*)

AS WITNESS, &c.

[THE SCHEDULE.] [Schedule.]

[(*To contain the form of assignment above referred to.*)]

No. II.

GRANT *of an* EXCLUSIVE LICENCE *to use, &c., a* PATENTED INVENTION *in consideration of* ROYALTIES.(*h*)

THIS GRANT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Grantor, which expression, where the context admits, includes his personal representatives and assigns), of the one part, and C. D., of, &c. (hereinafter called the Licensee, which expression, where the context admits, includes his personal representatives and assigns), of the other part: WHEREAS:— Parties.

(1) *Grantor registered as proprietor—Form No.* 4, *p.* 559:

(2) *Agreement to grant full, sole and exclusive licence—Form No.* 7, *p.* 559: Recitals.

NOW THIS DEED WITNESSETH, and it is hereby agreed, as follows:—

1. *Grant of licence—Form No.* 13, *p.* 561, *omitting reservation of right to manufacture.* Grant of licence.

2. *Statutory covenants for title to be implied* (*i*)*—Form No.* 69, *p.* 575.

(*g*) Where an applicant, who has agreed in writing to assign a patent, when granted, to another party, refuses to proceed with the application, the Comptroller has power, subject to appeal to the Law Officer, to allow the other party to proceed with the application and to grant the patent to him: P. & D. Acts, 1907 and 1919, s. 12 (1), proviso. For the practice before the Act of 1919, see *A. & B.'s Application* (1911), 28 Rep. Pat. Cas. 454; and *Wool, &c., Syndicate Ltd.* v. *Riches* (1902), 19 Rep. Pat. Cas. 127. Refusal to apply for grant.

(*h*) To be registered at the Patent Office. The register should be searched.

(*i*) It is conceived that Form No. 69, *supra*, should be used at any rate Implied covenants

Covenants by Licensee.

3. THE Licensee, for himself and the persons deriving title under him, hereby covenants with the Grantor that the Licensee will, during the continuance of the licence hereby granted, observe and perform the covenants and provisions following (that is to say):

(1) *To pay royalty—Form No.* 17, *p.* 563:

(2) *To pay a minimum yearly sum—Form No.* 18, *p.* 563:

(3) *To keep accounts—Form No.* 19, *p.* 563:

(4) *To furnish accounts to Grantor—Form No.* 20, *p.* 563:

(5) *To mark articles, &c.—Form No.* 21, *p.* 564:

[(6) *To comply with provisions of P. & D. Acts*, 1907 *and* 1919, *s.* 27—*Form No.* 29, *p.* 565.(*j*)]

Covenants by Grantor as to enjoyment, &c.

4. THE Grantor hereby covenants with the Licensee as follows:

(1) "That"—*continue covenant for quiet validity—Form No.* 37, *p.* 566:

(2) "That"—*continue qualified covenant for validity—Form No.* 40, *p.* 567.

General covenants by Grantor.

5. THE Grantor, for himself and the persons deriving title under him, hereby further covenants with the Licensee that the Grantor will, during the continuance of the Licence hereby granted, observe and perform the covenants and provisions following (that is to say):

(1) *To pay renewal fees—Form No.* 42, *p.* 567:

(2) *To take legal proceedings to protect patent against infringers—Form No.* 43, *p.* 568:

(3) *To defend proceedings for revocation of patent—Form No.* 47, *p.* 569:

(4) *To instruct Licensee as to working patent—Form No.* 48, *p.* 569:

(5) *Not to amend specification without consent of Licensee—Form No.* 49, *p.* 570:

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for title.

until the decision in *Guyot* v. *Thomson* [1894], 3 Ch. 388; 64 L. J. Ch. 32, has been reconsidered in view of L. P. Act, 1925, s. 205 (1) (ii) (xx).

Construction of covenants.

There is no longer any need for the covenantor in relation to his land to covenant expressly for the persons deriving title under him, this is implied: L. P. Act, 1925, s. 79; but in terms, the section only applies to land. Any covenant binds the real and personal estate of the covenantor: *ib.*, s. 80. Where made with two or more, the benefit devolves on the survivor or other persons entitled to sue, and, when made after 1925, is construed as being made with each of the covenantees.

(*j*) These covenants could not be insisted on in an open contract, but should be inserted where possible as a protection to the grantor.

(6) *Not to use patented invention himself or grant other licences—Form No.* 51, *p.* 570 :

(7) *To communicate improvements—Form No.* 55, *p.* 571 :

(8) *To give notice of demands for other licences—Form No.* 31, *p.* 565.

6. *Power to determine on notice—Form No.* 62, *p.* 573.

7. *Power for Grantor to determine licence—Form No.* 61, *p.* 573, *omitting such sub-clauses as are not required.*

8. *Proviso for determination of licence if patent declared invalid—Form No.* 60, *p.* 572. Determination of licence.

9. *Notices—Form No.* 70, *p.* 575. Notices.

10. *Arbitration—Form No.* 71, *p.* 575. Arbitration.

IN WITNESS, &c.

No. III.

GRANT *of a* GENERAL (*or* NON-EXCLUSIVE) LICENCE *to use &c., a* PATENTED INVENTION *in consideration of* ROYALTIES.(*k*)

THIS LICENCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Grantor, which expression, where the context admits, includes his personal representatives and assigns), of the one part, and C. D., of, &c. (hereinafter called the Licensee, [which expression, where the context admits, includes his personal representatives and assigns (*l*)]), of the other part : WHEREAS :— Parties.

(1) *Grant of patent to Grantor—Form No.* 1, *p.* 558, *or No.* 4, *p.* 559 :

(2) *Agreement to grant full licence—Form No.* 7, *p.* 559 :

NOW THIS DEED WITNESSETH, and it is hereby agreed, as follows :—

1. *Grant of licence—Form No.* 14, *p.* 562.

2. *Statutory covenants for title to be implied* (*m*)*—Form No.* 69, *p.* 575. Grant of licence. Implied covenants.

3. THE Licensee [for himself and the persons deriving title under him (*l*)] hereby covenants with the Grantor that the Licensee will, during the continuance of the Licence hereby granted, observe and perform the covenants and provisions following (that is to say) : Covenants by Licensee.

(*k*) To be registered at the Patent Office. The register should be searched.
(*l*) Omit if licence not to be assignable.
(*m*) See note to last Precedent.

(1) *To pay royalty—Form No.* 17, *p.* 563:

(2) *To keep accounts—Form No.* 19, *p.* 563:

(3) *To furnish accounts to Grantor—Form No.* 20, *p.* 563:

(4) *To mark articles—Form No.* 21, *p.* 564:

[(5) *To comply with provisions of P. & D. Acts*, 1907 *and* 1919, *s.* 27—*Form No.* 30, *p.* 565:]

(6) *To give notice of demands for other licences—Form No.* 31, *p.* 565.

Covenants by Grantor.

4. THE Grantor, for himself and the persons deriving title under him, hereby covenants with the Licensee that the Grantor will, during the continuance of the licence hereby granted, observe and perform the covenants and provisions following (that is to say):

(1) *To pay renewal fees—Form No.* 42, *p.* 567:

(2) *To take legal proceedings to protect patent against infringers—Form No.* 44, *p.* 569:

(3) *To defend proceedings for revocation of patent—Form No.* 47, *p.* 569:

(4) *To instruct Licensee as to working patent—Form No.* 48, *p.* 569:

(5) *To communicate improvements—Form No.* 55, *p.* 571:

(6) *To comply with provisions of the P. & D. Acts*, 1907 *and* 1919, *s.* 27—*Form No.* 59, *p.* 572:

(7) *Not to grant other licences on more favourable terms—Form No.* 52, *p.* 570.

Determination of licence.

5. *Power, if desired, to determine licence on notice—Form No.* 62, *p.* 573.

6. *Power for Grantor to determine on default—Form No.* 61, *p.* 573, *omitting such of the sub-clauses not required.*

7. *Licence determined if patent declared invalid—Form No.* 60, *p.* 572.

Notices.

8. *Notices—Form No.* 70, *p.* 575.

Arbitration.

9. *Arbitration—Form No.* 71, *p.* 575.

IN WITNESS, &c.

No. IV.

GRANT *of a* LIMITED LICENCE *to use, &c., a* PATENTED INVENTION *in consideration of* ROYALTIES.(*n*)

Parties.

THIS LICENCE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Grantor, which expression, where the context

(*n*) To be registered at the Patent Office. The register should be searched.

admits, includes his personal representatives and assigns), of the one part, and C. D., of, &c. (hereinafter called the Licensee [which expression, where the context admits, includes his personal representatives and assigns (*o*)], of the other part: WHEREAS:—

(1) *Grant of Patent to Grantor—Form No.* 1, *p.* 558, *or No.* 4, *p.* 559: Recitals.

(2) *Agreement to grant limited licence—Form No.* 7, *p.* 559, *omitting the word* "full":

(3) *Limits of Licence—Form No.* 9 *or* 10, *p.* 560.

NOW THIS DEED WITNESSETH and it is hereby agreed as follows:—

1. *Grant of Licence—Form No.* 15, *p.* 562. Grant of Licence.

2. *Statutory Covenants for title to be implied* (*p*)*—Form No.* 69, *p.* 575. Covenants for title.

3. THE Licensee [for himself and the persons deriving title under him (*q*)] hereby covenants with the Grantor that the Licensee will, during the continuance of the Licence hereby granted, observe and perform the covenants and provisions following (that is to say): Licensee's general covenants.

(*Add clauses* (1) *to* (6), *inclusive, as in Prec. III.*)

(7) *Not to work otherwise than in accordance with Licence—Form No.* 27, *p.* 564:

(8) *To permit Grantor to inspect stock and process of manufacture—Form No.* 28, *p.* 564:

(9) *To give notice of orders or enquiries—Form No.* 32, *p.* 565.

4. THE Grantor for himself and the persons deriving title under him, hereby covenants with the Licensee that the Grantor will, during the continuance of the Licence hereby granted, observe and perform the covenants and provisions following (that is to say): Covenants by Grantor.

(*Continue as in Prec. III to the end of that Precedent.*)

IN WITNESS, &c.

No. V.

ASSIGNMENT *of a* LICENCE.(*r*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one [1st] part, [E. F., of, Parties.

(*o*) Omit if licence is not to be assignable.

(*p*) See notes to Prec. II, pp. 579–580.

(*q*) Omit if licence is not to be assignable.

(*r*) To be registered at the Patent Office. The register of patents should be searched before completion. Searches.

&c. (hereinafter called the Grantor), of the 2nd part],(*s*) and C. D., of, &c. (hereinafter called the Purchaser), of the other [3rd] part : WHEREAS :—

Recitals.

Grant of Licence to Vendor.

(1) By a Deed (hereinafter called the Licence) dated, &c. (duly registered at the Patent Office), and made between E. F. [the Grantor], of the one part, and the Vendor of the other part, the said E. F. [the Grantor] granted unto the Vendor and the persons deriving title under him the full, sole, and exclusive licence under Letters Patent for —— (*title of Letters Patent*), dated the —— day of ——, 19—, and numbered ——, to use and exercise the invention comprised therein for the residue of the term thereof at the royalties and subject to the covenants and conditions contained in the Licence :

[Extension of Licence.]

[(2) The Vendor has duly notified to the Grantor his desire to treat the Licence as having been granted for the term of the said Letters Patent as extended under the provisions of section six of the Patents and Designs Act, 1919 :(*t*)]

Agreement to sell.

(3) The Vendor has agreed to sell to the Purchaser the benefit of the said Licence for the sum of £—— [and the Grantor has agreed to join in this Deed for the purpose of confirming the said sale] :

[Agreement by Grantor to join.]

NOW THIS DEED WITNESSETH, and it is hereby agreed, as follows :—

Assignment of Licence.

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges), the Vendor, As Beneficial Owner, hereby assigns [and the Grantor, As Beneficial Owner, hereby confirms] unto the Purchaser :

ALL THAT the licence granted unto the Vendor by the Licence, and the full benefit thereof,

TO HOLD unto the Purchaser for the residue of the term thereof, subject to the payment of the royalties reserved by and the covenants and provisions contained in the Licence and thereby made binding on the Vendor.

Benefit of covenants.

(*s*) If the original grantor desires to obtain the benefit of direct covenants with the purchaser, he should join in the assignment to confirm, though a person not a party may take the benefit of covenants expressed to be made with him : L. P. Act, 1925, s. 56.

Extension.

(*t*) Under the P. & D. Act, 1919, s. 6 (2) (a), a licence for the term of a patent originally granted for fourteen years, may, at the option of the licensee be treated as having been granted for the statutory extended term of sixteen years, if the licence was existing on the 23rd December, 1919.

2. THE Vendor hereby covenants with the Purchaser as follows : Covenants by Vendor.

(1) THAT notwithstanding anything by the Vendor done or omitted or knowingly suffered, the Licence is now valid and subsisting and not void or voidable : That licence valid and subsisting.

(2) THAT the Vendor has paid all the royalties and other sums payable by the Vendor under the provisions of the Licence up to the —— day of ——, 19— [the date of this deed] : That all royalties, &c., have been paid.

(3) THAT the Vendor has, up to the date hereof, observed and performed all the covenants and conditions contained in the Licence and on the part of the licensee thereunder to be observed and performed. That Vendor has observed and performed covenants in the licence.

3. THE Purchaser, for himself, and the persons deriving title under him, hereby covenants with the Vendor [and also, as a separate covenant, with the Grantor] as follows :— Covenants by Purchaser.

(1) THAT the Purchaser will, as from the —— day of ——, 19—, [from the date hereof,] pay to the said E. F. [the Grantor] the royalties [and all other money] (*u*) reserved or made payable to the said E. F. [the Grantor] by the Licence at the times and in the manner in which the same are by the Licence reserved or made payable : To pay royalties to original Grantor.

(2) THAT the Purchaser will henceforth pay the said royalties [and other money payable under the Licence] and observe and perform all the covenants and conditions contained in the Licence and on the part of the licensee thereunder to be observed and performed : To observe and perform covenants in the licence.

(3) THAT the Purchaser will save harmless and keep indemnified the Vendor and his estate and effects against all proceedings, costs, claims, and demands of whatsoever kind or description on account of any omission to pay the said royalties [or other money] or of any breach of any of the said covenants and conditions. To indemnify Vendor.

IN WITNESS, &c.

No. VI.

ASSIGNMENT *of* LETTERS PATENT.(*v*)

THIS ASSIGNMENT is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Vendor), of the one part, and C. D., of, Parties.

(*u*) *E.g.*, a minimum yearly sum.

(*v*) This assignment should be registered at the Patent Office. The Register of Patents should be searched before completion.

&c. (hereinafter called the Purchaser), of the other part: WHEREAS :—

Recitals.

(1) *Grant of patent—Form No.* 1, *p.* 558 :

(2) *Assignment to Vendor and registration—Forms Nos.* 3 *and* 4, *p.* 559 :

(3) *Agreement for sale—Form No.* 8, *p.* 560.

NOW THIS DEED WITNESSETH, and it is hereby agreed, as follows :—

Assignment of patent.

1. IN pursuance of the said agreement and in consideration of the sum of £——,(*w*) now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges)

Assignment of patent—Form No. 16, *p.* 562.

Improvements.

2. *Vendor to communicate and assign improvements—Form No.* 57, *p.* 571. [*Form No.* 58, *p.* 572, *may be added, if desired, but is not usual.*]

Validity.

3. *Qualified covenant for validity—Form No.* 40, *p.* 567.

IN WITNESS, &c.

No. VII.

MORTGAGE *of a* PATENT.(*x*)

Parties.

THIS MORTGAGE is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Borrower), of the one part, and C. D., of, &c. (hereinafter called the Mortgagee), of the other part: WHEREAS :—

Borrower first and true inventor.

(1) The Borrower claims to be the first and true inventor of an invention of —— (*insert title of the specification* (hereinafter called the said Invention)) :

Borrower registered as proprietor.

(2) The Borrower is registered as the proprietor of Letters Patent, dated the —— day of ——,19—, and numbered——, for the said Invention (*cf. Form No.* 4, *p.* 559) :

Agreement for loan.

(3) The Mortgagee has agreed to advance to the Borrower the sum of £——, upon having the repayment thereof with interest, as hereinafter mentioned, secured in manner hereinafter appearing :

Sale for royalty.

(*w*) Patents may also be assigned in consideration of the reservation of royalties or of a capital sum and royalties. Where the assignment is made in consideration of royalties, a covenant by the assignee to keep the patent on foot and to manufacture thereunder should be inserted, see Prec. No. II, *supra.*

(*x*) To be registered at the Patent Office and stamped with an *ad valorem* stamp on the sum advanced. The mortgagee will be registered as mortgagee: P. & D. Acts, 1907 and 1919, s. 71 (2). The Register at the Patent Office should be searched before completion.

NOW, in pursuance of the said agreement and in consideration of the sum of £——, now paid by the Mortgagee to the Borrower (the receipt of which sum the Borrower hereby acknowledges), THIS DEED WITNESSETH as follows :— Covenant to repay principal sum with interest.

1. THE Borrower hereby covenants with the Mortgagee to pay to him on the —— day of —— next the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum :

AND ALSO, so long as any principal money remains due under this deed after the said —— day of —— next, to pay to the Mortgagee interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year. Covenant to pay interest.

2. THE Borrower, As Beneficial Owner, hereby assigns unto the Mortgagee, Assignment of patent.

ALL THAT the said Invention and Letters Patent and the full benefit thereof and all rights therein, and in all improvements therein and extensions or prolongations of the term thereof,

TO HOLD unto the Mortgagee absolutely, but subject to the proviso for redemption hereinafter contained.

3. IT is hereby provided that on payment, on the —— day of —— next, by the Borrower or the persons deriving title under him to the Mortgagee or the persons deriving title under him, of the sum of £——, with interest thereon from the date hereof at the rate of £— per cent. per annum, the said Invention, Letters Patent, and premises hereinbefore assigned shall, at the request and cost of the Borrower or the persons deriving title under him, be duly re-assigned to him or them. Proviso for redemption.

4. THE Borrower, for himself and the persons deriving title under him, hereby covenants with the Mortgagee in manner following (that is to say) : Borrower's covenants.

(1) *Covenant that patent is valid, substituting* " Borrower " *for* " *Vendor* " (*y*)—*Form No.* 38, *p.* 566 :

(2) *To pay renewal fees—Form No.* 42, *p.* 567–568, *substituting* " Borrower " *for* " *Grantor* " *and* " Mortgagee " *for* " *Licensee* " *and omitting provision for deducting from royalties sums paid by Licensee :*

(3) *To give notice of infringements—Form No.* 33, *p.* 565, *susbtituting* " Borrower " *for* " *Licensee* " *and* " Mortgagee " *for* " *Grantor* " :

(*y*) In a mortgage this covenant should be absolute and not qualified ; see note to Form No. 38, pp. 566–567.

(4) *To commence and prosecute actions at the expense of the Borrower—Form No.* 43, *p.* 568, *making the necessary substitutions and omitting covenant for indemnity :*

To give notice of improvements, &c., to apply for patents in respect thereof, or permit Mortgagee so to do.

(5) (i) THAT the Borrower will, if he shall make or discover any addition to or improvement in or modification of the said Invention, forthwith give notice of the same to the Mortgagee in writing, and, at the request of the Mortgagee, but at the expense of the Borrower, apply for and endeavour to obtain Letters Patent in respect of any such addition or improvement or modification, and will, at the like expense, execute and do all such documents and things as may be necessary or proper for obtaining valid Letters Patent, pursuant to any such application, or permit the Mortgagee so to do in the name and at the expense of the Borrower ;

Appointment of Mortgagee as attorney.

(ii) FOR the purposes and consideration aforesaid the Borrower hereby appoints the Mortgagee and the persons deriving title under him (*z*) or his or their substitutes, jointly and severally, to be the attorney or attorneys of the Borrower to execute all necessary documents and do all such things as may be necessary or proper for giving effect to the foregoing provisions and to any assignment hereinafter mentioned ;

Mortgage to extend to further Letters Patent.

(iii) EVERY such further Letters Patent, and also all Letters Patent relating to any addition to or improvement in or modification of the said Invention, and every share or interest therein to which the Borrower shall hereafter become entitled, shall forthwith, at the cost of the Borrower, be assigned or otherwise vested in the Mortgagee, and so as to be subject to the like right of redemption and to the like covenants and provisions as are herein contained in respect of the Letters Patent hereby assigned ;

Payments properly made by Mortgagee payable by Borrower on demand.

(iv) THAT the Borrower will on demand pay to the Mortgagee the amount of any payment properly made by the Mortgagee under the provisions hereinbefore contained, whether the same shall have been made in respect of renewal or other fees or of the costs [including costs as between solicitor and client] of any proceedings (and whether the same shall have been successful or not) for defending or protecting any of the said Letters Patent; or in applying for or obtaining any Letters Patent as aforesaid or otherwise, together with interest thereon from the date of each such payment at the rate of £— per cent. per annum :

(*z*) The power can be given to persons deriving title under the mortgagee : L. P. Act, 1925, s. 128.

PROVIDED that until repayment thereof to the Mortgagee the amount from time to time so due shall be deemed to be charged upon the said Invention and Letters Patent, and to be secured in the same manner as the said principal sum of £——, and shall carry interest at the rate aforesaid ; Until payment to be a charge on mortgaged premises.

(v) THAT the Borrower will not grant any licence under any Letters Patent from time to time included in this security, save as is hereinafter expressly provided ; Borrower not to grant licence except under express powers.

(vi) *Borrower not to amend any patent—Adapt Form No.* 49, *p.* 570.

5. THE powers of sale of taking possession, and of appointing a receiver and other ancillary powers conferred on a mortgagee by the Law of Property Act, 1925, shall apply to and have effect with regard to the Letters Patent hereby assigned (including any further Letters Patent which may be assigned to the Mortgagee under the foregoing covenants), but with the following variations : Statutory powers of sale to apply.

(1) Under the said power of sale the Mortgagee and the persons deriving title under him may sell the said Letters Patent or any of them in consideration of a royalty or annual payment as well as in consideration of a capital sum, or partly in one way and partly in another : Additional power to sell in consideration of royalties.

(2) A receiver shall be entitled to apply royalties or other yearly sums received in respect of the said Letters Patent or any of them in discharge of the principal money hereby secured or any part thereof, as well as in payment of interest or arrears of interest in accordance with sub-section (8) of section one hundred and nine of the Law of Property Act, 1925. Application of royalties for reduction of debt.

6. UNTIL the Mortgagee shall become entitled to exercise the powers of sale and of taking possession hereby expressly or by reference conferred on him, the Borrower may : Powers of Borrower before security enforceable.

(1) Make, use, exercise and vend the inventions comprised in the said Letters Patent or any of them : To use and exercise invention.

(2) With the previous consent in writing of the Mortgagee, grant licences to make, use, exercise or vend the said inventions or any of them, during the whole or any part of the term of any Letters Patent, comprised in this security, and for that purpose use the name and act as the attorney of the Mortgagee :(*a*) To grant licences.

(*a*) See Chap. V, Sect. VI, *supra*. Unless the mortgagee joins in granting licences or unless they are granted under an express power, licences granted by the mortgagor alone would be defeasible by the mortgagee.

[Alternative form for Borrower to grant licences.]

[(2) Grant (but so as not in any way to involve the Mortgagee in any personal liability), at the highest rent or royalties conveniently obtainable, licences (other than sole or exclusive licences) to make, use, exercise or vend the said inventions or any of them, and for that purpose to use the name and act as the attorney of the Mortgagee :

PROVIDED that in every such licence there shall be inserted a provision whereby the same may be determined by the grantor thereof, or the persons deriving title under him on the happening of any of the following events :

(*Here insert and adapt such of the sub-clauses of Form* 61, *p.* 573, *as may be required.*)]

Power for Mortgagee to grant licences after security becomes enforceable.

7. (1) FROM and after the time when the Mortgagee shall first become entitled to exercise the powers of sale and of taking possession hereby expressly or by reference conferred on him, the Mortgagee alone may (subject to any licences granted by the Borrower under the provisions hereinbefore contained) make, use, exercise and vend the said inventions, or any of them, and grant licences, whether exclusive or general or otherwise, under the said Letters Patent or any of them, for such periods and upon such terms and conditions, and in any such manner as the Mortgagee may determine :

(2) ANY licences so granted by the Mortgagee shall not at any time thereafter be defeasible by the Borrower.

8. *Notices—Form No.* 70, *p.* 575.

Definitions.

9. IN this deed, where the context admits, the expressions the " Borrower " and the " Mortgagee " include the persons respectively deriving title under them, and the expression " Letters Patent " includes " Patents of Addition."(*b*)

IN WITNESS, &c.

(*b*) As to patents of addition, see P. & D. Acts, 1907 and 1919, s. 19 ; also Chap V, Sect. I, *supra.*

DIVISION VIII.

MISCELLANEOUS INSTRUMENTS.

No. I.

AGREEMENT *between* LESSOR *and* LESSEE *to refer* DISPUTE *as to alleged* BREACH *of* COVENANT *to* ARBITRATION.(*a*)

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c. (hereinafter called the Lessor), of the one part, and C. D., of, &c. (hereinafter called the Tenant), of the other part : WHEREAS :— Parties.

(1) (*Recite lease, setting out the covenant to repair*) : Lease.

(2) A dispute has arisen between the parties hereto as to whether the Tenant has duly performed his covenant contained in the said Lease for keeping the premises in proper repair, it being alleged by the Lessor and denied by the Tenant that the said covenant has been broken : Dispute between parties as to repairs.

(3) The parties hereto are desirous of referring the said matter in dispute to the arbitration of E. F., of, &c., and G. H., of, &c. (hereinafter called the Arbitrators), in manner hereinafter appearing. Parties desirous to refer matter to arbitration.

NOW IT IS HEREBY AGREED as follows :—

1. IT shall be referred to the Arbitrators to award and determine whether the Tenant has committed any, and if so what, breach of the covenants contained in the said Lease for keeping the premises in proper repair. Agreement referring dispute to arbitrators.

2. IF the Arbitrators shall find that any such breach has been committed, then to award and determine what ought to be done by the Tenant in order to remedy such breach, and also whether any, and if so what, sum of money ought to be paid by the Compensation ; costs.

(*a*) As to relief against decorative repairs : L. P. Act, 1925, s. 147. Under the Arbitration Act, 1889, every submission, unless a contrary intention is expressed, is irrevocable, and has the same effect as if it had been made an order of Court : s. 1. When once an award is made the Court cannot set it aside : *Darlington, &c., Co.* v. *Harding* (1891), 1 Q. B. 245 ; 60 L. J. Q. B. 110. The first schedule to the Act contains provisions for the appointment of an umpire, and as to the time of making the award and other matters, so that it is unnecessary to insert any express provisions as to these matters in the agreement. A professional man cannot be presumed to be acting as arbitrator gratuitously, and is entitled to reasonable remuneration without any agreement therefor : *Macintyre* v. *Smith* [1913], S. C. 129. Arbitration Act, 1889. Remuneration.

Tenant to the Lessor by way of compensation, and whether or not a breach has been committed to award the costs of the arbitration.

First Schedule of Arbitration Act to apply with a variation.

3. THE provisions in the First Schedule to the Arbitration Act, 1889, shall apply to this submission, except that one month shall be substituted in paragraph (C) for three months.(*b*)

Agreement to abide by award.

4. THE parties hereto shall observe, perform and abide by the award to be made pursuant to this submission.

AS WITNESS, &c.

No. II.

AWARD *as to* PURCHASE *and* COMPENSATION MONEY *to be paid in respect of* LANDS *taken by a* RAILWAY COMPANY.(*c*)

THIS AWARD is made this —— day of ——, 19—, BY A. B., of, &c. (hereinafter called the Arbitrator): WHEREAS:—

Agreement to refer matter to arbitration.

(1) By an Agreement dated, &c., and made between C. D., of, &c. (therein stated to be the tenant for life of the property thereinafter mentioned and hereinafter called the Owner), of the one part, and E. F., of, &c., the Secretary of the —— Railway Company (therein and hereinafter called the Company), of the other part, it was, in pursuance of the Lands Clauses Consolidation Act, 1845, referred to the Arbitrator as a single arbitrator to award and determine what sum of money ought to be paid by the Company for the purchase of the fee simple of the property mentioned in the schedule thereto and coloured pink on the plan thereto (of which schedule and plan the Schedule and plan hereto are respectively copies), and also what further sum (if any) ought to be paid by the Company by way of compensation in respect of the damage (if any) sustained by the Owner by reason of the severing of the same property from the other lands of the Owner, or otherwise injuriously affecting such other lands by the exercise by the Company of the powers of their special Act or any Act incorporated therewith:

Compliance with statutory requirements.

(2) The Arbitrator, having undertaken the burden of the said reference, and having (before entering into the consideration

Trustees' powers of submission.

Stamp.

(*b*) This may be omitted if the parties are satisfied with three months as the period within which the award is to be made. As to persons in a fiduciary position submitting matters to arbitration: S. L. Act, 1925, s. 58 (1); L. P. Act, 1925, s. 28; Ad. of E. Act, 1925, s. 39; T. Act, 1925, s. 15.

(*c*) See Lands Clauses Act, 1845, s. 25. Under Revenue Act, 1906, s. 9, the stamp will be 10*s.*; see Alpe, 18th ed., 70. Though the compensation may be fixed by an award, the title should be made without payment into Court: L. P. Act, 1925, s. 42 (7).

of the matters referred to the Arbitrator as aforesaid) duly made and subscribed in the presence of a justice duly authorised in that behalf, the declaration required by the Lands Clauses Consolidation Act, 1845 (which said declaration is hereunto annexed), and having viewed the lands mentioned in the Schedule hereto and the adjoining lands of the Owner and having heard what was alleged by or on behalf of the parties respectively, and having heard and considered all such evidence as has been produced before the Arbitrator, and having duly weighed and considered all and singular the matters and things referred to the Arbitrator as aforesaid has determined to make the following award: NOW THIS DEED WITNESSETH as follows :—

Award of arbitrator.

1. THE Arbitrator doth make and publish this his Award in writing concerning the said matters, and doth award and determine as follows (that is to say) :

(1) That the sum of £—— ought to be paid by the Company for the purchase of the fee simple of the property mentioned in the Schedule hereto :

(2) That the further sum of £—— ought to be paid by the Company by way of compensation in respect of the damage to be sustained by the Owner by reason of severing of the same from the other lands of the Owner, or otherwise injuriously affecting such other lands by the exercise by the Company of the powers of their special Act or any Act incorporated therewith.

Costs.

2. THIS award does not affect the statutory or other liability of the said parties respecting the payment of costs.

IN WITNESS, &c.

THE SCHEDULE.

No. III.

APPRENTICESHIP DEED.(*d*)

Parties

THIS APPRENTICESHIP DEED, made the —— day of ——, 19—, BETWEEN A. B. (hereinafter called the Apprentice), aged —— years, the son of E. B., of, &c., of the 1st part, the said E. B. (hereinafter called the Guardian), of the 2nd part, and C. D., of, &c. (hereinafter called the Master), of the 3rd part :

What stipulations in an apprenticeship contract are illegal.

(*d*) An infant is bound by a contract of apprenticeship unless it contains some stipulation so much to his detriment as to render it unfair that he should be bound by it, see 7 L. Q. R., pp. 3–4. Thus, a contract has been held void because of a clause enabling the master to stop the apprentice's wages in the event of a lock-out, this being a cause within the master's control : *R.* v. *Lord* (1848), 12 Q. B. 757 ; 17 L. J. M. C. 181 ; *Meakin* v. *Morris* (1884)

WITNESSETH and it is hereby declared as follows :—

Infant with consent of parent binds himself apprentice.

1. THE Apprentice, of his own free will, and with the consent of the Guardian, hereby binds himself apprentice to the Master, to learn the art or trade of a —— [*or*, that branch of a ——'s art or business called ——], and to serve after the manner of an apprentice from the —— day of ——, 19—, for the term of —— years.(*e*)

Covenants by Apprentice and his parent.

2. THE Apprentice and the Guardian hereby jointly and severally covenant with the Master that the Apprentice will, during his apprenticeship, faithfully, honestly, and diligently serve the Master, and obey all his lawful orders and requirements, and will not do, or knowingly suffer to be done, any damage or injury to the Master or his property, and will in all respects conduct himself as an honest and faithful apprentice ought to do.(*f*)

Covenants by Master to instruct

3. IN consideration of such service [and in consideration also of the sum of £—— now paid to the Master by the Guardian

---

12 Q. B. D. 352 ; 53 L. J. M. C. 72 ; *Corn* v. *Matthews* [1893], 1 Q. B. 310 ; 62 L. J. M. C. 61. On the other hand, a clause excepting from the period during which wages are to be paid "the usual holidays, and days on which the business of the master shall be at a standstill through accident beyond the control of the master," has been held good : *Green* v. *Thompson* [1899], 2 Q. B. 1 ; 68 L. J. Q. B. 719.

Contract determines with death of either party.

An apprenticeship contract is personal only, and is determined by the death of either party. Notwithstanding its personal nature, it may be entered into with a company : *Burnley, &c., Society* v. *Casson* [1891], 1 Q. B. 75 ; 60 L. J. M. C. 59. A contract of apprenticeship will become void if the master,

May be with a company.

by describing himself in the contract as an auctioneer, fails to take out a licence to act as such : *Creaser* v. *Hurley* (1915), 32 T. L. R. 149.

Disputes between master and apprentice.

Disputes between a master and his apprentice may be determined by a Court of summary jurisdiction under the Employers and Workmen Act, 1875 ; but to come within the Act the apprenticeship must be to the business of a workman as therein defined, upon the binding to which no premium or a premium not exceeding £25 is paid, or an apprenticeship under the Poor Law Acts. The Court has extensive powers, including a power to rescind the contract and a power to direct the apprentice to perform it, and to imprison him in default.

Stamp.

The stamp on an apprenticeship deed is 2*s.* 6*d.*

(*e*) Sometimes the following words are added here : EXCEPTING the usual holidays, and days on which the business of the Master shall be at a standstill through accident beyond the control of the Master.

Covenants in restraint.

(*f*) Where an infant apprentice covenants not to carry on a similar business during a certain period after the expiration of the apprenticeship term, the covenant is enforceable if the apprentice has attained full age : *Gadd* v. *Thompson* [1911], 1 K. B. 304 ; 80 L. J. K. B. 272. And as to restraining an ex-servant from using or disclosing any knowledge acquired by him during

(the receipt whereof the Master hereby acknowledges), and of the further sum of £—— hereinafter covenanted to be paid by the Guardian], the Master hereby covenants with the Apprentice, and also (as a separate covenant) with the Guardian, that the Master will, during the said apprenticeship, teach and instruct the Apprentice, or cause him to be taught and instructed, in the said art or trade [*or*, in the said —— branch of the said art or trade], and also will, during the said apprenticeship, provide the Apprentice with proper and suitable board, lodging, and clothes, and (so far as not furnished by the State) with medical attendance during illness [*or*, will, during the said apprenticeship, pay to the Apprentice for his work and services such wages as are hereinafter mentioned (that is to say) (*State the wages, e.g., a weekly sum increasing each year, an amount or a fixed proportion of the wages or prices paid to journeymen for work of a similar character, or as may be agreed*)].

Apprentice and provide board and lodging, &c., or pay him wages.

[4. PROVIDED that no deduction shall be made from the said wages in respect of the usual holidays, or any other holiday which may be allowed by the Master to the Apprentice, but the Apprentice shall not be entitled to any wages if and while he is absent from work through illness or for any other cause except the said holidays.]

[No deduction from wages for holidays, but wages not to be paid during absence from illness.]

[5. THE Guardian hereby covenants with the Master that he will pay to the Master the further sum of £—— on the —— day of ——, 19—, if the Master and the Apprentice shall both be then living and the Apprentice shall be then in the service of the Master.] (*Add, if desired, a clause fixing the hours of work, and what holidays shall be allowed to the Apprentice.*)

[Covenant by parent to pay further premium on a future day.]

[6. PROVIDED (*g*) that if the Master dies before the end of the said apprenticeship, his personal representatives shall repay to the Guardian the sum hereinafter mentioned (that is to say): If such death shall happen before the —— day of ——, 19—, the sum of £——, and if the same shall happen after that day the sum of £——.]

[On death of Master before end of term part of premium to be returned.]

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his employment, see *Amber Size Co.* v. *Menzel* [1913], 2 Ch. 239; 82 L. J. Ch. 573. On the distinction between covenants in restraint of trade between an employer and employee and those between a vendor and purchaser of a business, see *Morris* v. *Saxelby* [1916], 1 A. C. 688; 85 L. J. Ch. 210; *Attwood* v. *Lamont* [1920], 3 K. B. 571; 90 L. J. K. B. 121.

(*g*) In the absence of stipulation, the apprentice is not entitled to repayment of any part of the premium on the master's death: *Farrow* v. *Wilson* (1869), 4 C. P. 744; 38 L. J. C. P. 326; but see *Covell* v. *Scamell* (1910), 103 L. T. 535, where the master's firm was dissolved.

Repayment of premium.

Power for Master to dismiss Apprentice for disobedience or misconduct.

7. PROVIDED (*h*) that if the Apprentice shall wilfully disobey the lawful and reasonable orders of the Master, or shall persist in absenting himself from the Master's service during working hours without just cause, or shall otherwise misconduct himself, then and in any of such cases the Master may by a notice in writing determine the apprenticeship and dismiss the Apprentice from his service.

IN WITNESS, &c.

No. IV.

ARTICLES *of* CLERKSHIP *to a* SOLICITOR *when the* CLERK *is under age.*(*i*)

Parties.

THIS CLERKSHIP DEED, made the —— day of ——, 19—, BETWEEN A. B., of, &c., a solicitor of the Supreme Court of Judicature (hereinafter called the Solicitor), of the 1st part, C. D. (hereinafter called the Clerk), aged — years, the son of E. D., of, &c., of the 2nd part, and the said E. D. (hereinafter called the Guardian), of the 3rd part:

Clerk binds himself to a Solicitor for a term.

WITNESSETH, and it is hereby declared as follows:—

1. THE Clerk, of his own free will, and with the consent of the Guardian, hereby places and binds himself clerk to the Solicitor to serve him in his profession of a solicitor from the date hereof for the term of five years.

Covenant by Clerk and his father that Clerk will serve faithfully.

2. THE Clerk, and also the Guardian as surety for the Clerk, hereby jointly and severally covenant with the Solicitor as follows:

(1) That the Clerk will well, faithfully and diligently serve the Solicitor as his clerk in the profession of a solicitor, and will not at any time cancel, spoil, destroy, waste, spend, or make away with any of the books, papers, writings, money, stamps,

Power to dismiss.

(*h*) A clause enabling the master to dismiss the apprentice for misconduct was held valid in *Westwick* v. *Theodor* (1875), L. R. 10 Q. B. 224; 44 L. J. Q. B. 110. In the absence of express provision, a master cannot dismiss his apprentice for a mere neglect of duty, but he may do so if the apprentice, by wilful and persistent disobedience, or by dishonesty, makes it impossible for the master to carry out his contract: *Raymond* v. *Minton* (1866), L. R. 1 Ex. 244; 35 L. J. Ex. 153; *Learoyd* v. *Brook* [1891], 1 Q. B. 431; 60 L. J. Q. B. 373. As to repudiation by the apprentice, see *Waterman* v. *Fryer* [1922], 1 K. B. 499; 91 L. J. K. B. 315.

(*i*) See the Solicitors Acts, 1843, 1860, 1877, 1888; the Solicitors (Articled Clerks) Acts, 1918 and 1919; the Solicitors Act, 1922, ss. 1-5; the Solicitors (Examination) Act, 1917; and the Sex Disqualification Removal Act, 1919, s. 2. The stamp on these articles, which must be stamped on execution, is £80: Schedule to Stamp Act, 1891. As to registration with the Registrar of Solicitors, see Solicitors Act, 1888, ss. 7-9.

Stamp.

Infant son.

If the clerk is the son of the solicitor, the latter will act as guardian, references to any guardian will be omitted and in most cases no premium will be paid.

chattels, or other property belonging to the Solicitor [or his firm] or to any of the clients or employers of the Solicitor [or his firm] which shall be deposited in the hands or entrusted to the custody or possession of the Solicitor [or his firm] or which shall come, or be entrusted to the care, custody, or possession of the Solicitor [or his firm]:

To indemnify Solicitor against loss by Clerk's default.

(2) That in case the Clerk shall commit a breach of the foregoing covenant, or if the Solicitor [or his firm] shall sustain or suffer any loss, damage, or prejudice by reason of the misbehaviour, neglect, or improper conduct of the Clerk, then the Clerk and the Guardian, or one of them, will indemnify the Solicitor [and his firm] and make good to him [and his firm] the amount or value thereof:

(3) That the Clerk will, from time to time, and at all times during the said term, keep the secrets of the Solicitor [and his firm] and readily and cheerfully obey and execute the lawful and reasonable commands of the Solicitor [and his partners], and will not absent himself from the service or employment of the Solicitor at any time during the said term without the previous consent of the Solicitor, but will, from time to time, and at all times during the said term, conduct himself with all due diligence, honesty and propriety.(*j*)

Premium.

3. In consideration of the foregoing covenants and of the sum of £—— now paid by the Guardian to the Solicitor (the receipt of which sum the Solicitor hereby acknowledges), the Solicitor hereby covenants with the Clerk and also with the Guardian that the Solicitor will accept and take the Clerk as his clerk, and will by the best ways and means he may or can, and to the utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the Clerk in the practice or profession of a solicitor, and also will, at the expiration of the said term, use his best endeavours, at the request and cost of the Clerk, to cause and procure him to be admitted a solicitor of the Supreme Court, provided the Clerk shall have well, faithfully, and diligently served his said clerkship.

Solicitor covenants to instruct Clerk, and at end of term to procure his admission as a solicitor.

[4. The Solicitor hereby further covenants with the Guardian that if the Solicitor or the Clerk dies within the first —— years of the said term, then the Solicitor or his representatives will repay to the Guardian, or his personal representatives, such

[Further covenant by Solicitor to repay part of premium

(*j*) A covenant by an articled clerk not to act for persons who have been clients of the firm for five years before the expiration of the articles is valid: *Lewis* v. *Durnford* [1908], 24 T. L. R. 64.

in the event of death before end of term.] portion of the said premium of £—— as is hereinafter mentioned (that is to say) :

(1) If such death happens before the expiration of the first year of the said term the sum of £—— :

(2) If such death happens after the expiration of the first year and before the expiration of the second year of the said term the sum of £—— : and

(3) If such death happens after the expiration of the second year and before the expiration of the third year of the said term, the sum of £——.]

IN WITNESS, &c.

No. V.

APPOINTMENT *by an* INFANT *of a* GUARDIAN *of his* PERSON *and* ESTATE.(*k*)

I, A. B., of, &c. (*infant*), being now of the age of —— years or thereabouts, do this —— day of ——, 19—, hereby appoint C. D., of, &c. (*guardian*), to be the guardian of my person and estate until I shall attain the age of twenty-one years.

AS WITNESS my hand the day and year first above written.

(Signed) A. B.

No. VI.

DEED *of* MERGER *of* TITHE RENT-CHARGE.(*l*)

Parties. THIS DEED of MERGER is made this, &c., 19—, By A. B., of, &c., and C. D., of, &c.(hereinafter called the Owners) : WHEREAS :—

Commutation award. (1) By an Award made pursuant to the Tithe Act, 1838, and duly confirmed on the —— day of ——, the tithes of the

Infant of age of fourteen years may appoint guardian. (*k*) When an heir in socage had no testamentary guardian, he might at the age of fourteen years choose a guardian for the remainder of his minority : Co. Litt. 78b ; Simpson on Infants, 3rd ed., p. 187. The election by an infant of his own guardian did not supersede the authority of the Court, and as it was doubtful what were the powers of a guardian so elected, this course was seldom resorted to.

Guardians not generally required in regard to infants' property. Heirship (with an exception in the case of a lunatic of full age on 1st January, 1926) has been abolished by the Ad. of E. Act, 1925, and an infant cannot take a legal estate in land : L. P. Act, 1925, s. 1. If an infant is entitled to an interest in land, title to the land must either be made by the statutory owners under S. L. Act, 1925, s. 26, or by a co-tenant for life of full age : *ib.*, s. 19, or by trustees for sale : see, *e.g.*, L. P. Act, 1925, s. 28 (4). Again the Infants' Property Act, 1830, has been repealed by L. P. (Amend.) Act, 1924, 10th Sch., hence a guardian of an infant (save in regard to applications to the Court) will, after 1925, have little or nothing to do with the property of an infant.

This Prec. is unaffected by the Guard. of Inf. Act, 1925, which merely equalises the rights and responsibilities of both parents.

Merger of tithe rent- (*l*) The Tithe Act, 1836, enables any person seised in fee or in tail in possession of tithes or rent-charges in lieu of tithes (after 1925 a tenant in tail

Parish of L., in the County of ——, were commuted and a rent-charge of the annual sum of £5 was awarded to be paid to ——, of the Parish of ——, in the said County of ——, Esquire, his heirs or assigns, or to the persons entitled in remainder or reversion after him, instead of impropriate tithes arising from certain lands of the Parish of L., of the estimated quantity, in statute measure, of —— :

Apportionment.

(2) By the instrument of apportionment of the rent-charge awarded to be paid in lieu of the tithes of the said Parish of L., and also duly confirmed on the —— day of ——, the said rent-charge of £5 has been charged upon the lands particularly described in the said apportionment, and on the plan thereto annexed, numbered respectively ——, ——, —— :

Seisin of part of lands and tithe rent-charge.

(3) The said A. B. is seised in fee simple in possession of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the said lands numbered ——, —— and ——, respectively, and is seised in fee simple in possession of the same lands :

Seisin of part of lands and tithe rent-charge.

(4) The said C. D. is seised in fee simple in possession of the said lands numbered ——, ——, ——, and —— respectively, and is also seised in fee simple in possession of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the last-mentioned lands :

Merger by proprietors of rent-charge.

NOW THEREFORE, the Owners, according to their respective rights and interests therein, do hereby respectively declare it is their will and intent that the said tithe rent-charge of £5 shall henceforth be absolutely merged and extinguished in the

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charges with consent of Minister of Agriculture and Fisheries.

or tenant for life in possession being of full age will have the fee simple in tithe rent-charge vested in him as the estate owner trustee for the purposes of the settlement), by deed or by declaration under his hand and seal, to be made in a form approved by the Commissioners (now the Minister of Agriculture, &c.), and confirmed under his seal, to merge the tithes, or rent-charge, in the land out of or in respect of which they issue. By the subsequent Acts this power is extended to any persons seised of or having the power of acquiring or disposing of the fee simple in possession of the tithes or rent-charge (persons having a general power of appointment can no longer make a title to land or tithe rent-charges unless they are also the estate owners), and to a tenant for life in possession where the tithe rent-charge and the lands are settled to the same uses, and to glebe lands where the glebe and the tithe rent-charge belong to the same person in right of his benefice (Tithe Act, 1839, s. 6), also to any person entitled in equity to the tithe rent-charge as if he had been legally entitled thereto : Tithe Act, 1846, s. 19. After 1925 the merger should be effected by the estate owners of the land and the rent-charge.

Stamp.

A deed or declaration for the merging of tithe or tithe rent-charge under the above Acts is not chargeable with stamp duty : Tithe Act, 1838, s. 2 ; Tithe Act, 1846, s. 20. The draft should be submitted to the Ministry for approval.

freehold of the lands in respect of which the said rent-charge was heretofore payable, and upon which it has been charged as aforesaid in and by the said instrument of apportionment :

IN TESTIMONY whereof the Owners have hereunto subscribed their names and affixed their seals the day and year first above written. (*To be confirmed by the Minister of Agriculture and Fisheries.*)

No. VII.

PRESENTATION *to a* BENEFICE.

TO THE RIGHT REVEREND FATHER IN GOD, ——, by Divine permission Lord Bishop of ——, or to his Vicar, general or spiritual, or to any other person having or that shall have sufficient authority in this behalf.

Presentation to the rectory.

I, A. B., of, &c., the true and undoubted patron of the rectory of ——, in the County of ——, within your lordship's diocese and jurisdiction, do this —— day of ——, HEREBY PRESENT to your lordship, and to the rectory of ——, aforesaid (now become vacant by the death of the Rev. C. D., clerk, the last incumbent thereof), and to my presentation in full right belonging the Rev. E. F., clerk, now of ——, in the County of ——, humbly praying that your lordship will be graciously pleased to admit and canonically institute the said E. F., to the said rectory of the parish church of —— aforesaid, and to invest him with all and singular the property, rights, members, and appurtenants thereunto belonging, and to cause him to be inducted into the real, actual, and corporeal possession thereof, and to do all other things which to your pastoral office may in this case appertain and belong.

IN WITNESS, &c.

No. VIII.

AGREEMENT *by the* OWNER *of a* HOUSE *who has opened a* WINDOW *overlooking his neighbour's premises to* BLOCK *it up when required, and to* PAY *an* ANNUAL SUM *by way of* ACKNOWLEDGMENT *in the meantime.*(*m*)

Parties.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part :

(*m*) See Prescription Act, 1832, s. 3; *Bewley* v. *Atkinson* (1879), 13 Ch. D. 283; 49 L. J. Ch. 153. This Act is not affected by the new law : L. P. Act, 1925, s. 12. See also L. R. Act, 1925, ss. 72, 75 (5).

WHEREAS the said A. B., being the owner in fee simple of a dwelling-house known as, &c. (*describing it shortly*), has lately opened a window on the —— floor of the said dwelling-house, which window overlooks the adjoining premises known as, &c. (*describing them shortly*), the property of the said C. D. : That A. B. has opened a window overlooking adjoining property.

NOW IT IS HEREBY DECLARED as follows :—

1. THE said A. B., at the request of the said C. D., and in order to prevent the acquisition of a right under section three of the Prescription Act, 1832, hereby acknowledges that the said A. B. enjoys the access and use of light to and for the said dwelling-house through and by means of the said window by the leave and indulgence of the said C. D., and not as of right. Acknowledgment that enjoyment of light is by leave, and not of right.

2. THE said A. B. hereby agrees with the said C. D. that the said A. B., or the persons deriving title under him, will block up and close the said window whenever requested so to do by the said C. D., or the persons deriving title under him, and will in the meantime, in consideration of the aforesaid indulgence, pay to the said C. D., or the persons deriving title under him, the annual sum of one shilling on the first day of January in every year.(*n*) Agreement to block up window if required, and to pay annual sum in meantime.

AS WITNESS, &c.

No. IX.

DEED *for regulating rights of Light and Air on two adjoining* ESTATES *with a view to rebuilding.*(*o*) (*Legal Estates.*)

THIS BUILDING REGULATION DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the X. Owner, which expression, where the context admits, includes the persons deriving title under him), of the one part, and C. D., of, &c. (hereinafter called the Y. Owner, which expression, where the context admits, includes the persons deriving title under him), of the other part : WHEREAS :— Parties.

(1) The X. Owner is seised in fee simple free from incum- Seisin of the X. estate.

(*n*) C. D. should see that this is regularly paid, as if it is not paid it might be inferred that the agreement had been put an end to ; see *Bewley* v. *Atkinson* (1879), 13 Ch. D. 283 ; 49 L. J. Ch. 153 ; the agreement to block up the windows is an affirmative covenant : *Smith* v. *Colbourne* [1914], 2 Ch. 533 ; 84 L. J. Ch. 112 ; the acknowledgment rent is not a legal rent-charge : L. P. Act, 1925, s. 1 (2) (*b*), hence s. 4 (3) does not apply. Acknowledgment rent.

(*o*) This deed should be executed in duplicate, and each owner should register a land charge against the other in respect of restrictive covenants, unless a memorial of the deed is registered in a local deeds registry, both estates being within its jurisdiction. Land Charge.

brances of the freehold property and houses (hereinafter called the X. Estate) described in the first part of the First Schedule hereto and more particularly delineated on the plan hereto and thereon coloured pink :

Sesin of the Y. Estate.

(2) The Y. Owner is seised in fee simple, free from incumbrances, of the adjoining freehold property and houses (hereinafter called the Y. Estate) described in the first part of the Second Schedule hereto and more particularly delineated on the plan hereto and thereon coloured blue :

Agreement as to building regulations.

(3) The X. Owner and the Y. Owner have agreed that for securing the enjoyment of light and air and other easements and advantages to the buildings now erected or hereafter to be erected on the X. and Y. Estates respectively, such covenants should be entered into as are hereinafter contained, and for further assurance and by way of grant of legal easements it has been agreed that such mutual grants should be made as hereinafter appearing :

NOW THIS DEED WITNESSETH, and it is hereby declared as follows :—

Covenants and stipulations binding on the X. Estate.

1. For the benefit of the owners, occupiers, and tenants from time to time of the Y. Estate, the X. Owner hereby covenants with the Y. Owner that the X. Owner and the persons deriving title under him will, at all times hereafter, observe and perform the restrictions and stipulations contained in the second part of the First Schedule hereto.

Covenants and stipulations binding on the Y. Estate.

2. For the benefit of the owners, occupiers, and tenants from time to time of the X. Estate, the Y. Owner hereby covenants with the X. Owner that the Y. Owner and the persons deriving title under him will, at all times hereafter, observe and perform the restrictions and stipulations contained in the second part of the Second Schedule hereto.

Limit of liability.

3. Provided that the X. Owner and the Y. Owner, or other the owners from time to time of the X. Estate and the Y. Estate respectively, shall, as regards any of the said covenants which are restrictive of the user of the X. Estate and the Y. Estate respectively, be liable only in respect of breaches which occur while they shall respectively be owners of the X. Estate and the Y. Estate respectively, or of the part thereof on which any breach shall occur.

Grant of easements over the X. Estate.

4. The X. Owner, As Beneficial Owner, hereby grants unto the Y. Owner,

ALL AND SINGULAR the easements, rights, privileges and advantages in respect of light, air, prospect and otherwise which are consequent upon the due observance and performance by the X. Owner and the persons deriving title under him of the stipulations contained in the second part of the First Schedule hereto and are consistent with the X. Owner and the persons deriving title under him erecting buildings in accordance with the stipulations contained in the second parts of the First and Second Schedules hereto,

TO HOLD unto the Y. Owner in fee simple as appurtenant to the Y. Estate.

Grant of easements over the Y. Estate.

5. THE Y. Owner, As Beneficial Owner, hereby grants unto the X. Owner,

ALL AND SINGULAR the easements, rights, privileges and advantages in respect of light, air, prospect and otherwise which are consequent upon the due observance and performance by the Y. Owner and the persons deriving title under him of the stipulations contained in the second part of the Second Schedule hereto and are consistent with the Y. Owner and the persons deriving title under him erecting buildings in accordance with the stipulations contained in the second parts of the First and Second Schedules hereto,

TO HOLD unto the X. Owner in fee simple as appurtenant to the X. Estate.

IN WITNESS, &c.

THE FIRST SCHEDULE.

First Part.

Particulars of the X. Estate.

Second Part.

Particulars of the stipulations and regulations intended to affect the X. Estate.

THE SECOND SCHEDULE.

First Part.

Particulars of the Y. Estate.

Second Part.

Particulars of the stipulations and regulations intended to affect the Y. Estate.

No. X.

BUILDERS' CONTRACT.

Parties.

AN AGREEMENT, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called the Builders), of the one part, and the —— Bank Limited, whose registered office is at —— (hereinafter called the Owners), of the other part :

WHEREBY IT IS AGREED as follows :—

Builders to erect banking house according to specification, &c.

1. THE Builders shall erect and complete a banking-house with suitable offices upon the piece of land belonging to the Owners situated in —— Street, in the Town of ——, according to the specification, plans, drawings, and elevations which have been signed by the Builders and by the architect of the Owners, and shall provide the materials, and execute, perform, and fully complete the works respectively specified and required in the said specification, plans, drawings, and elevations, or to be implied therefrom, or incidental thereto, or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the said original specification, plans, drawings, and elevations), and also in such additional instructions and drawings (not being so in conformity as aforesaid) as shall, from time to time, during the progress of the said works, be provided by the architect from time to time of the Owners (hereinafter called the Architect) ; and will complete all the said works with materials of the best quality, and in the most substantial and workmanlike manner, and to the satisfaction of the Architect, without reference to any other person ; and shall, in all respects, comply with and abide by the true intent and meaning of the said specification, plans, drawings, and elevations, and of this agreement.(*o*)

Contract price.

2. THE consideration for this contract shall (subject as hereinafter provided) be the sum of £——, to be paid by the Owners to the Builders at the times and in the manner hereinafter mentioned.

To cover in and complete by certain dates, or otherwise to pay a fixed penalty.

3. (1) THE Builders shall cover in the roof of the said banking-house on or before the —— day of ——, 19—, and shall finish and complete the said banking-house and offices on or before the —— day of ——, 19— :

Interruption of building operations.

(*o*) As to the effect of an interruption of building on the contract, see *Metropolitan Water Board* v. *Dick, Kerr & Co.* [1918], A. C. 119 ; 87 L. J. K. B. 370 ; also *Federal Steam Navigation Co.* v. *Dixon* [1919], W. N. 277 ; *Woodfield S.S. Co.* v. *Thompson*, 36 T. L. R. 43 ; *Mertens* v. *Home Freeholds Co.* [1912], 2 K. B. 526 ; 90 L. J. K. B. 707.

(2) If the said banking-house and offices shall not be completed on or before the said —— day of —— the Builders shall forfeit, out of the money which would otherwise be payable to them by virtue of this agreement, the sum of £—— for every day which shall elapse after the —— day of ——, 19—, until the said banking-house and offices shall be completed :

Strike clause.

Provided that in case the Builders shall be prevented by any strike or lock-out in the building trade or other cause not under the control of the Builders from complying with this clause, the Architect shall extend the time for the completion of the works (without giving rise to a forfeiture) for such reasonable period as he may think fit.

Materials.

4. All bricks, timber, and other materials which shall from time to time be brought upon the property by the Builders for the purpose of erecting the said buildings (except such (if any) as shall be rejected by the Architect as not being in accordance with the specification) shall be deemed to be the absolute property of the Owners.(*p*)

If Builders make default Architect may, after notice, employ others to complete works.(*q*

5. (1) If the Builders shall, in the opinion of the Architect, fail to proceed with the said works with all reasonable speed according to the terms and conditions of this contract, the Architect may leave or cause to be left at the usual place of abode or business of the Builders or any of them, [or of their sureties or either of them], a notice in writing for the Builders to proceed regularly and effectually with the said works :

(2) If the Builders shall, for seven days after such notice is so left as aforesaid, make default in regularly and effectually proceeding with the said works, then and in such case the Architect may employ any other workmen, either by contract or measure and value or otherwise, to proceed with the said works and complete the same, and for that purpose may take possession of and use all scaffolding, plant, tools, implements, and things in and about the works, and the Architect may pay to the workmen

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(*p*) This clause does not make it necessary to register the contract as a bill of sale : *Brown* v. *Bateman* (1867), L. R. 2 C. P. 272 ; 36 L. J. C. P. 134 ; *Reeves* v. *Barlow* (1884), 12 Q. B. D. 436 ; 53 L. J. Q. B. 192. Building materials.

It is conceived that under this clause the materials vest in the owners, subject to an implied condition of defeasance if the builders complete the works according to the contract, and in that case they would be entitled to remove any materials not used : *Hart* v. *Porthgain Harbour Co.* [1903], 1 Ch. 690 ; 72 L. J. Ch. 426 ; but *cf. Re Keen* [1902], 1 K. B. 555 ; 71 L. J. K. B. 487 ; *Byford* v. *Russell* [1907], 2 K. B. 522 ; 76 L. J. K. B. 744.

(*q*) This clause cannot be extended to the builders' bankruptcy *Ex p. Barter* (1884), 26 Ch. D. 510 ; 53 L. J. Ch. 802. Bankruptcy.

so employed (out of the money which would otherwise be payable to the Builders on account of this contract) the amount of their charges for the same and for all necessary materials to be found and provided for such completion; and if the same shall be insufficient, the Builders shall make good the deficiency on demand.

Architect may remove workmen for incompetency or other causes.

6. IF the Architect shall at any time consider any of the workmen employed by the Builders on the works as in anywise incompetent, or as acting improperly, the Architect may in any such case discharge any such workmen, and the Builders shall, without delay, put another workman or other workmen in his or their place.

Architect to appoint a clerk of the works.

7. THE Architect may appoint a suitable person to be clerk of the works to superintend the said works, and to be constantly on the property during their progress; and the clerk of the works shall be paid by the Owners [Builders].

Architect or clerk of the works may remove unsound materials.(r)

8. (1) IN case any of the materials brought on the property by the Builders shall be considered by the Architect or the clerk of the works to be unsound or in any respect improper, the Builders shall, upon notice in writing to them or their foreman on the property, given by the Architect or clerk of the works, cause the same to be removed from the property, and shall proceed with the said works with materials corresponding with the said specification and instructions, and approved of by the Architect:

(2) IN default of such removal within three days after such last-mentioned notice, the Architect may cause the same to be removed to such places as he may think proper, without being in any wise accountable for any loss or damage that shall happen to any materials so removed as aforesaid, and may cause proper materials to be substituted for the same, and may pay all expenses attending such removal and substitution out of the money which would otherwise be payable to the Builders by virtue of this contract.

Builders to take down unsound work and rebuild.

9. IF the Architect shall consider any part of the said works to be executed in an unsound and improper manner, the Builders shall cause the same immediately to be taken down and executed in a proper manner, and to the satisfaction of the Architect, without any extra charge or expense whatever.

Removal.

(r) These provisions apply only during the construction of the building; see *Adcock's Trustee* v. *Bridge Rural Council* (1911), 75 J. P. 241.

Power for Architect or the Owners to direct additions or alterations.

10. (1) If the Architect or the Owners shall think proper at any time to make any alterations or additions to or omissions in the said works, he or they shall give to the Builders written instructions for such alterations, additions, or omissions, signed by the Architect:

(2) The Builders shall not have power to make any alteration, addition, or omission, or to make any claim for extras, without such written instructions so signed as aforesaid: (*s*)

(3) If any alteration or addition be charged for or brought into any day account, the said day account shall be delivered at the office of the Architect on the Tuesday morning next ensuing after such day work may have been done, signed by the clerk of the works, and no account unless so signed and delivered shall be admitted by the Architect.

Value of alterations, &c., to be ascertained and added to original contract-money.

11. (1) Any such alteration, addition, or omission shall not vacate this contract, but the value thereof shall be ascertained and added to or deducted from the said sum of £——, according to the judgment of and an admeasurement or valuation to be made by the Architect [*or*, by a Quantity Surveyor], who, in making the valuation, shall use and take into consideration the schedule of prices annexed to the specification so far as the same shall, in the opinion of the Architect [*or* Surveyor], be applicable thereto:

(2) The Builders shall not, by reason only of any such alteration or addition as aforesaid, be allowed any further time for completing the works, unless the Architect shall by writing extend the time on that account, which he shall be at liberty to do.(*t*)

Any unauthorised deviations to be corrected at expense of Builders.

12. Any deviation made in the said works from the original plans, drawings, elevations, and specification (except such deviations as shall be ordered as last aforesaid) shall be altered and corrected at the cost of the Builders.

Builders to repair damage.

13. Any damage arising from accidents or carelessness of workmen or otherwise to the said works, or to the materials or implements therein used, shall be borne and made good by the Builders at their own cost.

Builders to insure.

14. The Builders shall, during the progress of the works, at their own cost, from time to time insure (in some office or insurers

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Implied "extras."

(*s*) Such instructions were implied in *Molloy* v. *Liebe* (1910), 102 L. T. 616; and see *Brodie* v. *Cardiff Corporation* [1919], A. C. 337; 88 L. J. K. B. 609.

(*t*) As to the necessity for this clause, see *Dodd* v. *Churton* [1897], 1 Q. B. 562; 66 L. J. Q. B. 477.

to be approved in either case by the Owners, and in the joint names of the Builders and of the Owners) the said buildings and materials from loss or damage by fire in such sums as the Architect shall from time to time require, and shall continue such insurance until the Architect shall certify that the said banking-house and offices are completed.

Builders to pay fees of district surveyor, and generally to execute all works described in specification, &c., or to be implied therefrom.

15. THE Builders shall pay all the fees of the district surveyor or other fees or demands arising from the execution of the said works, and shall generally do, execute, and provide not only all the works and materials described in the said specification, plans, drawings, and elevations, but likewise all such works and materials as are necessarily implied or may be reasonably inferred in or from the said plans, drawings, elevations, and specification respectively, for the erection and completion of the said buildings with the offices and appurtenances, although the same may not happen to be therein expressly mentioned as to be done by the Builders, the true intent and meaning of this contract being that the works and materials hereby contracted to be done, executed, and provided, shall include all that is requisite for the building and completing the said building and offices according to the said plans, drawings, elevations, and specification.

Builders not to make sub-contract without consent.

16. THE Builders shall not (without the consent of the Architect) make any sub-contract for the execution of the said works, or any part thereof, nor, unless with such consent as aforesaid, assign or underlet this contract.

The contract-money to be paid by instalments.

17. THE said sum of £——, or other the sum which, having regard to the provisions hereof, shall be payable to the Builders under this contract, shall be paid to the Builders in manner following (that is to say):

(1) £—— part thereof shall be paid by twelve instalments of £—— each, upon the certificate from time to time of the Architect as aforesaid, that work and materials to a sufficient amount or value shall have been done, executed or provided by the Builders to the satisfaction of the Architect:

(2) The balance thereof shall be paid within three months after the whole of the said works shall be completed and finished and the accounts made up:

As to defects.

PROVIDED that if any defect in construction or otherwise shall be discovered within the said period of three months the same shall be made good by and at the expense of the Builders to the satisfaction of the Architect.

18. THE Builders shall not be entitled to demand or receive the said balance until the Architect shall certify under his hand that the whole of the said works have been completed and finished to his satisfaction and that all defects have been made good. Balance to be paid on certificate of Architect of completion of works.

19. THE decision of the Architect with respect to the amount, state, and condition of the works actually executed, and also with respect to any and every question that may arise concerning the construction of this contract, or the said plans, drawings, elevations, and specification, or the execution of the said works, or in anywise relating thereto, shall be final and without appeal. Decision of Architect to be final.(*u*)

20. THE Builders shall comply with all statutory enactments and bye-laws relating to buildings in force within the said district, and shall keep the Owners indemnified from all claims on account of any breach thereof. Building regulations.

IN WITNESS, &c.

No. XI.

DEED OF DEDICATION *between the* OWNER *of a* BUILDING ESTATE *and an* URBAN DISTRICT COUNCIL, *whereby the former agrees to throw* LAND *into the* HIGHWAY *to enable the same to be* WIDENED *at the expense of the* COUNCIL. (*Legal Estate.*)

THIS DEDICATION DEED is made, &c., BETWEEN A. B., of, &c. (hereinafter called the Owner), of the one part, and the Urban District Council of ——, in the County of —— (hereinafter called the Council), of the other part: WHEREAS:— Parties.

(1) The Owner is seised in fee simple of the land situated in the Parish of ——, in the County of ——, bounded on the —— side by a street called —— Street, and coloured pink on the plan hereto: Seisin.

(2) It has been arranged between the Owner and the Council (subject to the leave of the Ministry of Health being obtained for a loan for the purpose) that the portion of —— Street aforesaid which abuts on the said land shall be widened from its present average width of twenty-five feet to a width of forty-two feet: Agreement to widen street.

NOW THIS DEED WITNESSETH as follows:—

1. THE Owner agrees that he will give up and dedicate to the public use sufficient land on the —— side of —— Street Owner agrees to give up land to be

(*u*) The architect must act judicially: *Hickman & Co.* v. *Roberts* [1913], A. C. 229; 82 L. J. K. B. 678.

thrown into highway.(*v*)

aforesaid to enable that street to be widened for a length of —— yards or thereabouts to a width of forty-two feet, which strip of land intended to be dedicated as aforesaid is hatched black on the plan hereto.

Council to execute street works in same.

2. THE Council hereby agree that they will (so soon as the leave of the Ministry of Health is obtained for a loan for the purpose aforesaid) take the necessary steps for making up and completing within a reasonable time the new portions of the carriage-ways and footways of —— Street aforesaid, with all necessary and proper pavements, kerbs, channels, gullies, lamp-posts, and other matters incidental thereto as the Council may consider necessary.

Date of dedication.

3. THE dedication aforesaid shall take effect from the date of the order of the Minister authorising the proposed loan.

IN WITNESS, &c.

No. XII.

AGREEMENT *between a* COUNTY COUNCIL *and a* DISTRICT COUNCIL *with respect to* SURFACE WATER DRAINS *under the* MAIN ROADS.(*w*)

Parties.

THIS AGREEMENT is made, &c., BETWEEN the —— County Council (hereinafter called the County Council), of the one part,

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(*v*) A conveyance of the land is unnecessary, the dedication to the public being sufficient. In many cases, however, a conveyance is taken. The deed may be enrolled at the Central Office: S. L. Act, 1925, s. 56 (1) (iii). Only assurances within M. & Ch. Uses Act, 1888, s. 4, have to be sent to the Charity Commissioners: S. L. Act, 1925, s. 29 (4).

Dedication, &c., by a tenant for life and other persons in a fiduciary capacity.

A tenant for life has power to grant or demise land gratuitously, in connexion with the development or general benefit of the settled land, for the public and charitable purposes (which include roads, public or private) mentioned in S. L. Act, 1925, s. 55, but subject to the restrictions imposed by that section. Also, under s. 56, for the general benefit of the residents on the settled land, he may cause land to be laid out for streets, open spaces, &c.

In regard to the dedication of land for the public purposes there mentioned, he is in the same position as if he were an absolute owner: sub-s. 2. He has also power to enter into agreements and give consents under the Highway Acts, 1835 and 1862: *ib.*, sub-s. 3. The foregoing powers are also exercisable by trustees for sale: L. P. Act, 1925, s. 28, and by personal representatives: Ad. of E. Act, 1925, s. 39.

Highway authorities.

(*w*) The County Council are the highway authority as regards main roads, the District Council as regards other roads repairable by the inhabitants at large. The County Council may, and frequently do, contract with the District Council for the maintenance by the latter of the main roads in the district in consideration of an annual sum to be paid to them by the County Council: Local Gov. Act, 1888, s. 11; *Derby C. C.* v. *Matlock, &c., Council* [1896], A. C. 315; 65 L. J. Q. B. 419. In some counties it is found more satisfactory

and the Urban District Council of ——, in the County of —— (hereinafter called the District Council), of the other part: WHEREAS:—

(1) The District Council have submitted to the County Council a proposal for the construction of surface water drains under the following main roads in the —— district, viz. (*mentioning them*), in accordance with plans and specifications prepared by the surveyor to the District Council, and have applied to the County Council for a contribution towards the cost of carrying out the said works: Proposal by District Council to construct drains under main roads.

(2) The said plans and specifications have been approved by the county surveyor, and the County Council have offered a contribution of £——, which offer the District Council have accepted, subject to the following conditions: Offer of County Council to contribute part of expense.

NOW, in exercise of the power for this purpose conferred by the Highways and Bridges Act, 1891, and of all other powers (if any) them enabling, the County Council and the District Council hereby agree as follows:— Agreement under 54 & 55 Vict. c. 63.

1. THE District Council shall execute the surface drainage works hereinbefore referred to in accordance with the said plans and specifications, subject to the leave of the Ministry of Health. District Council to execute works.

2. THE County Council shall pay to the District Council the sum of £—— as their contribution to the cost of the said works so soon as the county surveyor shall certify that the same have been completed to his satisfaction. County Council to contribute to cost.

3. THE District Council may at any time or times— Powers for District Council to connect drains under specified

(1) Connect any drain belonging to any of the sections of the district roads mentioned in the Schedule hereto with any

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that all road repairs should be effected by the County Council. With respect to the widening or other improvement of a main road, the County Council, as a general rule, refuse to do more than contribute a portion of the expense, the remainder being paid by the District Council; the two bodies have power to make arrangements of this kind under the Highways and Bridges Act, 1891. The surface water drains running under a road and used for draining it belong to the highway authority. Water drains.

In the above Precedent it is assumed that the surface water drainage of a district is defective, and that the District Council are desirous of laying down a new system of surface water drains, not only for the drainage of the main and district roads, but also for carrying away the rain-water falling from the roofs of houses abutting on the roads, instead of letting such water pass into the sewerage sewers. It is also assumed that the County Council have agreed to contribute a portion of the cost so far as regards the drains under the main roads.

An agreement under the Highways Acts must be stamped 6*d.*, but an agreement under the Local Gov. Act, 1888, s. 11, must be stamped 10*s.*: *Southampton C. C.* v. *I. R. C.* (1905), 92 L. T. 364; Highmore, 4th ed., 93. Stamp.

district roads with main road drains.

main road drain made in pursuance of this agreement, so that the water from the district road drain may flow into and through the main road drain and be carried away by means thereof :

To cause rain-water falling on roofs, &c., of houses to pass into drains.

(2) Cause or permit the rain-water falling on the roofs, yards or areas, carriage-drives or garden-walks of or belonging to any houses or buildings adjoining or near to any main road to be carried into any main road drain by means of subsidiary drains, pipes or otherwise, and generally use any main road drain for any purposes connected with the surface water drainage of the district, if and so far as such user thereof shall not prejudice or interfere with its effectual working for the drainage of the main roads :

To enter on main roads.

(3) Enter with or without workmen, surveyors or other officers into and upon any main road for the purpose of making any connexion with the main road drain, or for doing any other work hereby authorised :

Works to be done to satisfaction of county surveyor.

(4) Provided that any work done by the District Council on or to a main road in the exercise of the powers hereby conferred, shall be done to the satisfaction of the county surveyor, and if at the time when the work is done there shall be no subsisting contract between the two councils under sub-section (4) of section eleven of the Local Government Act, 1888, the District Council shall pay to the County Council reasonable compensation for any damage or injury consequential on such work.

Water from outside district not to be discharged into drains.

4. THE District Council shall not permit the discharge of surface water or other matter coming from outside their district into any drain hereby authorised to be connected with the main road drains.

No drains except under specified roads to be connected with main road drains.

5. NO drain in the district other than a drain belonging to a section of a road mentioned in the Schedule hereto shall be connected either directly or indirectly with any main road drain without the consent of the County Council.

IN WITNESS, &c.

THE SCHEDULE.

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